

99TH CONGRESS
1ST SESSION

H. R. 3660

To amend title 5, United States Code, to establish a new supplemental retirement plan for those Federal employees, postal employees, and Members of Congress who are covered by title II of the Social Security Act, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 31, 1985

Mr. FORD of Michigan (for himself, Ms. OAKAR, Mr. CLAY, Mrs. SCHROEDER, Mr. SOLARZ, Mr. GARCIA, Mr. LELAND, Mr. YATRON, Mr. SIKORSKI, Mr. McCLOSKEY, Mr. ACKERMAN, Mr. DYMALLY, Mr. DE LUGO, Mr. UDALL, Mr. GILMAN, Mr. PASHAYAN, Mr. HORTON, Mr. YOUNG of Alaska, Mr. HOYER, Mr. ALEXANDER, Mr. OWENS, Mrs. BURTON of California, Mr. MATSUI, Mr. WRIGHT, Mr. COELHO, Mr. ADDABBO, Ms. MIKULSKI, Mr. MARTINEZ, Mr. GRAY of Illinois, Mr. LEHMAN of California, Mr. STOKES, Mr. DYSON, Mr. WHEAT, Mr. BARNES, Mrs. BOXER, Mr. EDGAR, Mr. FAUNTROY, Mr. FAZIO, Mr. FOGLIETTA, Mr. GEJDENSON, Mr. HEFTTEL of Hawaii, Mr. HOWARD, Mr. ROE, Mr. WIRTH, Mr. EVANS of Illinois, Mr. AKAKA, Mr. BORSKI, Mr. DICKS, Mr. DWYER of New Jersey, Mr. LANTOS, Mr. DE LA GARZA, Mr. PEPPER, Mr. MADIGAN, Mrs. COLLINS, and Mrs. BYRON) introduced the following bill; which was referred to the Committee on Post Office and Civil Service

A BILL

To amend title 5, United States Code, to establish a new supplemental retirement plan for those Federal employees, postal employees, and Members of Congress who are covered by title II of the Social Security Act, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the “Civil
 5 Service Supplemental Retirement System Act of 1985”.

6 (b) **TABLE OF CONTENTS.**—The table of contents is as
 7 follows:

TABLE OF CONTENTS

Sec. 1. Short title; table of contents.

Sec. 2. Purposes.

TITLE I—CIVIL SERVICE SUPPLEMENTAL RETIREMENT SYSTEM

Sec. 101. Establishment.

TITLE II—AMENDMENTS TO CHAPTER 83 OF TITLE 5, UNITED STATES CODE

Sec. 201. Treatment under chapter 83 of certain individuals excluded from chapter 84.

Sec. 202. Non-applicability of chapter 83 to individuals under chapter 84.

Sec. 203. Pay for the Executive Director of the Federal Retirement Thrift Investment Board.

Sec. 204. Technical amendment to section 8332(k).

TITLE III—MISCELLANEOUS PROVISIONS

Sec. 301. Extension of Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983.

Sec. 302. Election to modify terms of participation under chapter 83.

TITLE IV—EFFECTIVE DATES

Sec. 401. Effective dates.

8 **SEC. 2. PURPOSES.**

9 The purposes of this Act are—

10 (1) to establish a civil service supplemental retire-
 11 ment plan which, in conjunction with title II of the
 12 Social Security Act, is comparable to the Civil Service
 13 Retirement System;

- 1 (2) to provide for a fully funded and financially
2 sound retirement benefits plan for Federal employees;
3 (3) to provide for portability of retirement assets
4 earned as an employee of the Federal Government;
5 (4) to provide options for Federal employees with
6 respect to retirement planning; and
7 (5) to include Federal employees in the invest-
8 ment decisionmaking process with respect to the assets
9 of the retirement system.

10 **TITLE I—CIVIL SERVICE SUPPLEMENTAL**
11 **RETIREMENT SYSTEM**

12 **SEC. 101. ESTABLISHMENT.**

13 (a) **IN GENERAL.**—Title 5, United States Code, is
14 amended by inserting after chapter 83 the following new
15 chapter:

16 **“CHAPTER 84—CIVIL SERVICE**
17 **SUPPLEMENTAL RETIREMENT SYSTEM**

“SUBCHAPTER I—GENERAL PROVISIONS

“Sec.

“8401. Definitions.

“8402. Civil Service Supplemental Retirement System; exclusions.

“SUBCHAPTER II—DEFINED BENEFIT PLAN

“8410. Eligibility for annuity.

“8411. Creditable service.

“8412. Immediate retirement.

“8413. Deferred retirement.

“8414. Early retirement.

“8415. Computation of basic annuity.

“8416. Survivor reduction for a current spouse.

“8417. Survivor reduction for a former spouse.

“8418. Survivor elections; deposit; offsets.

“8419. Survivor reductions; computation.

- "8420. Insurable interest reductions.
- "8421. Annuity supplement.
- "8422. Deductions and withholdings from pay.
- "8423. Government contributions.
- "8424. Lump-sum benefits; designation of beneficiary; order of precedence.
- "8425. Mandatory separation.

"SUBCHAPTER III—THRIFT SAVINGS PLAN

- "8431. Definitions.
- "8432. Contributions.
- "8433. Benefits.
- "8434. Thrift Savings Fund.
- "8435. Accounting.
- "8436. Investments.
- "8437. Information.

"SUBCHAPTER IV—SURVIVOR ANNUITIES

- "8441. Definitions.
- "8442. Rights of a widow or widower.
- "8443. Rights of a child.
- "8444. Rights of a named individual with an insurable interest.
- "8445. Rights of a former spouse.

"SUBCHAPTER V—DISABILITY BENEFITS

- "8451. Disability retirement.
- "8452. Computation of disability annuity.
- "8453. Application.
- "8454. Medical examination.
- "8455. Recovery; restoration of earning capacity.
- "8456. Relationship to workers' compensation.
- "8457. National Guard technicians.

"SUBCHAPTER VI—GENERAL AND ADMINISTRATIVE PROVISIONS

- "8461. Authority of the Office of Personnel Management.
- "8462. Cost-of-living adjustments.
- "8463. Rate of benefits.
- "8464. Commencement and termination of annuities of employees and Members.
- "8465. Waiver, allotment, and assignment of benefits.
- "8466. Application for benefits.
- "8467. Court orders.
- "8468. Annuities and pay on reemployment.
- "8469. Withholding of State income taxes.
- "8470. Exemption from legal process; recovery of payments.

"SUBCHAPTER VII—FEDERAL RETIREMENT THRIFT INVESTMENT MANAGEMENT SYSTEM

- "8471. Definitions.
- "8472. Federal Retirement Thrift Investment Board.
- "8473. Employee Thrift Advisory Council.
- "8474. Executive Director.
- "8475. Investment policies.

"8476. Administrative provisions.

"8477. Fiduciary responsibilities; liability and penalties.

"8478. Bonding.

"8479. Exculpatory provisions; insurance.

1 "SUBCHAPTER I—GENERAL PROVISIONS

2 "§ 8401. Definitions

3 "For the purpose of this chapter—

4 "(1) the term 'account' means an account estab-
5 lished and maintained under section 8435(a) of this
6 title;

7 "(2) the term 'annuitant' means a former employ-
8 ee or Member who, on the basis of that individual's
9 service, meets all requirements for title to an annuity
10 under subchapter II or V of this chapter and files
11 claim therefor;

12 "(3) the term 'average pay' means the largest
13 annual rate resulting from averaging an employee's or
14 Member's rates of basic pay in effect over any 3 con-
15 secutive years of service or, in the case of an annuity
16 under this chapter based on service of less than 3
17 years, over the total service, with each rate weighted
18 by the period it was in effect;

19 "(4) the term 'basic pay' has the meaning given
20 such term by section 8331(3) of this title;

21 "(5) the term 'Board' means the Federal Retire-
22 ment Thrift Investment Board established by section
23 8472(a) of this title;

1 “(6) the term ‘Civil Service Retirement and Dis-
2 ability Fund’ means the Civil Service Retirement and
3 Disability Fund under section 8348 of this title;

4 “(7) the term ‘court’ means any court of any
5 State, the District of Columbia, the Commonwealth of
6 Puerto Rico, Guam, the Northern Mariana Islands, or
7 the Virgin Islands, and any Indian court;

8 “(8) the term ‘Director’ means the Director of the
9 Office of Personnel Management;

10 “(9) the term ‘dynamic assumptions’ means eco-
11 nomic assumptions that are used in determining actuar-
12 ial costs and liabilities of a retirement system and in
13 anticipating the effects of long-term future—

14 “(A) investment yields;

15 “(B) increases in rates of basic pay; and

16 “(C) rates of price inflation;

17 “(10) the term ‘earnings’, when used with respect
18 to the Thrift Savings Fund, means the amount of the
19 gain realized or yield received from the investment of
20 sums in such Fund;

21 “(11) the term ‘employee’ means—

22 “(A) an individual referred to in subpara-
23 graph (A), (E), (F), (H), (I), or (J) of section
24 8331(1) of this title; and

1 “(B) a Congressional employee as defined in
2 section 2107 of this title, including a temporary
3 Congressional employee and an employee of the
4 Congressional Budget Office;

5 any of whose service after December 31, 1983, is em-
6 ployment for the purposes of title II of the Social Se-
7 curity Act and chapter 21 of the Internal Revenue
8 Code of 1954, except that such term does not
9 include—

10 “(i) any individual referred to in—

11 “(I) clause (i), (v), (vi), or (ix) of para-
12 graph (1) of section 8331 of this title;

13 “(II) clause (ii) of such paragraph (other
14 than an employee of the United States Park
15 Police, or the United States Secret Service,
16 any of whose service after December 31,
17 1983, is such employment); or

18 “(III) the undesignated material after
19 clause (ix) of such paragraph; or

20 “(ii) any individual excluded under section
21 8402(b) or (c) of this title;

22 “(12) the term ‘former spouse’ means a former
23 spouse of an individual—

1 “(A) if such individual performed at least 18
2 months of civilian service creditable under section
3 8411 of this title as an employee or Member; and

4 “(B) if the former spouse was married to
5 such individual for at least 9 months;

6 “(13) the term ‘Executive Director’ means the
7 Executive Director appointed under section 8474(a) of
8 this title;

9 “(14) the term ‘firefighter’ means a firefighter as
10 defined by section 8331(21) of this title;

11 “(15) the term ‘Fund’ means the Civil Service
12 Retirement and Disability Fund;

13 “(16) the term ‘Government’ means the Federal
14 Government and Gallaudet College;

15 “(17) the term ‘law enforcement officer’ means—

16 “(A) a law enforcement officer as defined by
17 section 8331(20) of this title; and

18 “(B) an employee, the duties of whose posi-
19 tion primarily involve the protection of officials of
20 the United States against threats to personal
21 safety;

22 “(18) the term ‘loss’, when used with respect to
23 the Thrift Savings Fund, means the amount of the loss
24 resulting from the investment of sums in such Fund;

1 “(19) the term ‘lump-sum credit’ means the unre-
2 funded amount consisting of—

3 “(A) retirement deductions withheld from the
4 basic pay of an employee or Member under sec-
5 tion 8422 of this title (and under section 204 of
6 Public Law 98-168); and

7 “(B) interest on the deductions which, for
8 any calendar year, shall be equal to the overall
9 average yield to the Fund during the preceding
10 fiscal year from all obligations purchased by the
11 Secretary of the Treasury during such fiscal year
12 under section 8348(c), (d), and (e) of this title, as
13 determined by the Secretary;

14 “(20) the term ‘Member’ has the same meaning as
15 provided in section 2106 of this title, except that such
16 term does not include an individual who irrevocably
17 elects, by written notice to the official by whom such
18 individual is paid, not to participate in the Civil Serv-
19 ice Supplemental Retirement System;

20 “(21) the term ‘net earnings’ means the excess of
21 earnings over losses;

22 “(22) the term ‘net losses’ means the excess of
23 losses over earnings;

24 “(23) the term ‘normal-cost percentage’ means
25 the entry-age normal cost of the provisions of the

1 System which relate to the Fund, computed by the
2 Office in accordance with generally accepted actuarial
3 practice and standards (using dynamic assumptions)
4 and expressed as a level percentage of aggregate basic
5 pay;

6 "(24) the term 'Office' means the Office of Per-
7 sonnel Management;

8 "(25) the term 'price index' has the same meaning
9 as provided in section 8331(15) of this title;

10 "(26) the term 'service' means employment which
11 is creditable under section 8411 of this title;

12 "(27) the term 'supplemental liability' means the
13 estimated excess of—

14 "(A) the actuarial present value of all future
15 benefits payable from the Fund under this chap-
16 ter, over

17 "(B) the sum of—

18 "(i) the actuarial present value of de-
19 ductions to be withheld from the future basic
20 pay of employees and Members pursuant to
21 section 8422 of this title;

22 "(ii) the actuarial present value of the
23 future contributions to be made pursuant to
24 section 8423 of this title; and

1 “(iii) the balance in the Fund attributa-
2 ble to the System as of the date the supple-
3 mental liability is determined;

4 “(28) the term ‘survivor’ means an individual en-
5 titled to an annuity under subchapter IV of this
6 chapter;

7 “(29) the term ‘System’ means the Civil Service
8 Supplemental Retirement System described in section
9 8402(a) of this title;

10 “(30) the term ‘Member service’ has the meaning
11 provided under section 8331(14) of this title; and

12 “(31) the term ‘Indian court’ has the meaning
13 given such term by section 8331(24) of this title.

14 **“§ 8402. Civil Service Supplemental Retirement System;**
15 **exclusions**

16 “(a) The provisions of this chapter comprise the Civil
17 Service Supplemental Retirement System.

18 “(b) The provisions of this chapter shall not apply with
19 respect to any individual—

20 “(1) who has performed service of a type de-
21 scribed in subparagraph (C), (D), (E), or (F) of section
22 210(a)(5) of the Social Security Act continuously since
23 December 31, 1983 (determined in accordance with
24 the provisions of section 210(a)(5)(B) of the Social Se-
25 curity Act relating to continuity of employment); or

1 “(2) who separates, or who has separated, from
2 the service after—

3 “(A) having been an employee or Member
4 subject to subchapter III of chapter 83 of this
5 title; and

6 “(B) having completed at least 5 years of ci-
7 vilian service creditable under such subchapter
8 (determined without regard to any deposit or re-
9 deposit requirement under such subchapter, or any
10 requirement that the individual become subject to
11 such subchapter after performing the service in-
12 volved).

13 “(c)(1) The Office may exclude from the operation of
14 this chapter an employee or group of employees in or under
15 an Executive agency, the United States Postal Service, or
16 the Postal Rate Commission whose employment is temporary
17 or intermittent, except an employee whose employment is
18 part-time career employment (as defined in section 3401(2) of
19 this title).

20 “(2) The Architect of the Capitol may exclude from the
21 operation of this chapter an employee under the Office of the
22 Architect of the Capitol whose employment is temporary or
23 of uncertain duration.

24 “(3) The Librarian of Congress may exclude from the
25 operation of this chapter an employee under the Library of

1 Congress whose employment is temporary or of uncertain du-
2 ration.

3 “(4) The Director or Acting Director of the Botanic
4 Garden may exclude from the operation of this chapter an
5 employee under the Botanic Garden whose employment is
6 temporary or of uncertain duration.

7 “SUBCHAPTER II—DEFINED BENEFIT PLAN

8 “§ 8410. Eligibility for annuity

9 “Notwithstanding any other provision of this chapter,
10 an employee or Member must complete at least 5 years of
11 civilian service creditable under section 8411 of this title in
12 order to be eligible for an annuity under this subchapter.

13 “§ 8411. Creditable service

14 “(a) The total service of an employee or Member is the
15 full years and twelfth parts thereof, excluding from the ag-
16 gregate the fractional part of a month, if any.

17 “(b) For the purpose of this chapter, creditable service
18 of an employee or Member includes—

19 “(1) employment as an employee and any Member
20 service;

21 “(2) military service, as provided in section
22 8332(c) of this title (but without regard to whether a
23 deposit has been made under section 8334(j) of this
24 title with respect to such service);

1 “(3) service with respect to which deductions and
2 withholdings under section 204(a)(1) of Public Law
3 98-168 have been made; and

4 “(4) service (performed before January 1, 1987)
5 which, but for the provisions of section 8347(n) of this
6 title, would be creditable under subchapter III of chap-
7 ter 83 of this title (determined without regard to any
8 deposit or redeposit requirement under such subchapter
9 or any requirement that the individual become subject
10 to such subchapter after performing the service in-
11 volved).

12 “(c) Credit under this chapter shall be allowed for leaves
13 of absence without pay granted an employee while perform-
14 ing military service, or while receiving benefits under sub-
15 chapter I of chapter 81 of this title. An employee or former
16 employee who returns to duty after a period of separation is
17 deemed, for the purpose of this subsection, to have been on
18 leave of absence without pay for that part of the period in
19 which that individual was receiving benefits under subchapter
20 I of chapter 81 of this title. Credit may not be allowed for so
21 much of other leaves of absence without pay as exceeds 6
22 months in the aggregate in a calendar year.

23 “(d) Credit shall be allowed for periods of approved
24 leave without pay granted an employee to serve as a full-
25 time officer or employee of an organization composed primar-

1 ily of employees (as defined by section 8331(1) or 8401(11) of
2 this title), subject to the employee arranging to pay, through
3 his employing agency, within 60 days after commencement of
4 such leave without pay, amounts equal to the retirement de-
5 ductions and agency contributions which would be applicable
6 under section 8332(k)(1) of this title if he were in pay status
7 and subject to such section. If the election and all payments
8 provided by this subsection are not made, the employee may
9 not receive credit for the periods of leave without pay, not-
10 withstanding the third sentence of subsection (c).

11 **"§ 8412. Immediate retirement**

12 **"(a)** An employee or Member who is separated from the
13 service after becoming 55 years of age and completing 30
14 years of service is entitled to an annuity.

15 **"(b)** An employee or Member who is separated from the
16 service after becoming 60 years of age and completing 20
17 years of service is entitled to an annuity.

18 **"(c)** An employee or Member who is separated from the
19 service after becoming 62 years of age and completing 5
20 years of service is entitled to an annuity.

21 **"(d)** An employee who is separated from the service,
22 except by removal for cause on charges of misconduct or de-
23 linquency, after becoming 50 years of age and completing 20
24 years of service as a law enforcement officer or firefighter, or

1 any combination of such service totaling at least 20 years, is
2 entitled to an annuity.

3 “(e) An employee who is separated from the service,
4 except by removal for cause on charges of misconduct or de-
5 linquency, after completing 25 years of service as an air traf-
6 fic controller, or after becoming 50 years of age and complet-
7 ing 20 years of service as an air traffic controller, is entitled
8 to an annuity.

9 “(f)(1) A Member who is separated from the service,
10 except by resignation or expulsion—

11 “(A) after completing 25 years of service; or

12 “(B) after becoming 50 years of age, and

13 “(i) completing 20 years of service, or

14 “(ii) serving in 9 Congresses,

15 is entitled to an annuity.

16 “(2) A Member who is separated from the service after
17 becoming 60 years of age and completing 10 years of
18 Member service is entitled to an annuity.

19 **“§ 8413. Deferred retirement**

20 “(a) An employee or Member who is separated from the
21 service, or transferred to a position in which the employee or
22 Member does not continue subject to this chapter, after com-
23 pleting 5 years of service is entitled to an annuity beginning
24 at the age of 62 years.

1 “(b) A Member who is separated from the service after
2 completing 10 or more years Member service is entitled to an
3 annuity beginning at the age of 60 years.

4 “(c) A Member who is separated from the service after
5 completing 20 or more years of service, including 10 or more
6 years of Member service, is entitled to an annuity beginning
7 at the age of 50 years.

8 **“§ 8414. Early retirement**

9 “(a)(1) A member of the Senior Executive Service who
10 is removed from the Senior Executive Service for less than
11 fully successful executive performance (as determined under
12 subchapter II of chapter 43 of this title) after completing 25
13 years of service, or after becoming 50 years of age and com-
14 pleting 20 years of service, is entitled to an annuity.

15 “(2) A member of the Defense Intelligence Senior Exec-
16 utive Service or the Senior Cryptologic Executive Service
17 who is removed from such service for less than fully success-
18 ful executive performance after completing 25 years of serv-
19 ice, or after becoming 50 years of age and completing 20
20 years of service, is entitled to an annuity.

21 “(b)(1) Except as provided in paragraphs (2) and (3) of
22 this subsection, an employee who—

23 “(A) is separated from the service involuntarily,
24 except by removal for cause on charges of misconduct
25 or delinquency; or

1 “(B) while serving in a geographic area designat-
2 ed by the Director, is separated from the service volun-
3 tarily during a period in which (as determined by the
4 Director)—

5 “(i) the agency in which the employee is
6 serving is undergoing a major reorganization, a
7 major reduction in force, or a major transfer of
8 function; and

9 “(ii) a significant percentage of the total
10 number of employees serving in such agency will
11 be separated or subject to an immediate reduction
12 in the rate of basic pay (without regard to sub-
13 chapter VI of chapter 53 of this title or compara-
14 ble provisions);

15 after completing 25 years of service, or after becoming 50
16 years of age and completing 20 years of service, is entitled to
17 an annuity.

18 “(2) An employee under paragraph (1) of this subsection
19 who is separated as described in subparagraph (A) of such
20 paragraph is not entitled to an annuity under this subsection
21 if the employee has declined a reasonable offer of another
22 position in the employee's agency for which the employee is
23 qualified, and the offered position is not lower than 2 grades
24 (or pay levels) below the employee's grade (or pay level) and
25 is within the employee's commuting area.

1 “(3) Paragraph (1) of this subsection shall not apply to
2 an employee entitled to an annuity under subsection (d) or (e)
3 of section 8412 of this title.

4 **“§ 8415. Computation of basic annuity**

5 “(a) The annuity of an employee retiring under this sub-
6 chapter is 1 percent of that individual's average pay multi-
7 plied by such individual's total service.

8 “(b)(1) The annuity of a Member, or former Member
9 with title to a Member annuity, retiring under this subchapter
10 is computed under subsection (a) of this section, except that if
11 the individual has had at least 5 years of service as a Member
12 or Congressional employee, or any combination thereof, so
13 much of the annuity as is computed with respect to service
14 described in paragraph (2) of this subsection is equal to—

15 “(A) $1\frac{7}{10}$ percent of that individual's average
16 pay multiplied by so much of such individual's service
17 (described in such paragraph (2)) as does not exceed 20
18 years; plus

19 “(B) $1\frac{1}{2}$ percent of that individual's average pay
20 multiplied by so much of such individual's service (de-
21 scribed in such paragraph (2)) as exceeds 20 years.

22 “(2) This subsection applies to service as a Member,
23 service as a Congressional employee, and so much of any
24 military service as would be allowable under section 8332(d)
25 of this title.

1 “(c)(1) The annuity of a Congressional employee, or
2 former Congressional employee, retiring under this chapter is
3 computed under subsection (a) of this section, except that if
4 the individual has had at least 5 years of service as a Con-
5 gressional employee or Member, or any combination thereof,
6 so much of the annuity as is computed with respect to service
7 described in paragraph (2) of this subsection is equal to—

8 “(A) $1\frac{7}{10}$ percent of that individual's average
9 pay multiplied by so much of such individual's service
10 (described in such paragraph (2)) as does not exceed 20
11 years; plus

12 “(B) $1\frac{1}{2}$ percent of that individual's average pay
13 multiplied by so much of such individual's service (de-
14 scribed in such paragraph (2)) as exceeds 20 years of
15 service.

16 “(2) This subsection applies to service as a Congression-
17 al employee, service as a Member, and military service not
18 exceeding 5 years.

19 “(d) The annuity of an employee retiring under subsec-
20 tion (d) or (e) of section 8412 of this title or under subsection
21 (a) or (b) of section 8425 of this title is—

22 “(1) $1\frac{7}{10}$ percent of that individual's average pay
23 multiplied by so much of such individual's total service
24 as does not exceed 20 years; plus

1 “(2) 1½ percent of that individual’s average pay
2 multiplied by so much of such individual’s total service
3 as exceeds 20 years.

4 **“§ 8416. Survivor reduction for a current spouse**

5 “(a)(1) If an employee or Member is married at the time
6 of retiring under this chapter, the reduction described in sec-
7 tion 8419(a) of this title shall be made unless the employee or
8 Member and the spouse jointly waive, by written election,
9 any right which the spouse may have to a survivor annuity
10 under section 8442 of this title based on the service of such
11 employee or Member. A waiver under this paragraph shall be
12 filed with the Office under procedures prescribed by the
13 Office, and shall be irrevocable.

14 “(2) Notwithstanding paragraph (1) of this subsection,
15 an employee or Member who is married at the time of retir-
16 ing under this chapter may waive the annuity for a surviving
17 spouse without the spouse’s consent if the employee or
18 Member establishes to the satisfaction of the Office (in ac-
19 cordance with regulations prescribed by the Office)—

20 “(A) that the spouse’s whereabouts cannot be de-
21 termined; or

22 “(B) that, due to exceptional circumstances, re-
23 quiring the employee or Member to seek the spouse’s
24 consent would otherwise be inappropriate.

1 “(b)(1) Upon remarriage, a retired employee or Member
2 who was married at the time of retirement (including an em-
3 ployee or Member whose annuity was not reduced to provide
4 a survivor annuity for the employee or Member’s spouse or
5 former spouse as of the time of retirement) may irrevocably
6 elect during such marriage, in a signed writing received by
7 the Office within 2 years after such remarriage or, if later,
8 within 2 years after the death or remarriage of any former
9 spouse of such employee or Member who was entitled to a
10 survivor annuity under section 8445 of this title (or of the
11 last such surviving former spouse, if there was more than
12 one), a reduction in the employee or Member’s annuity under
13 section 8419(a) of this title for the purpose of providing an
14 annuity for such employee or Member’s spouse in the event
15 such spouse survives the employee or Member.

16 “(2) The election and reduction shall be effective the
17 first day of the second month after the election is received by
18 the Office, but not less than 9 months after the date of the
19 remarriage.

20 “(3) An election to provide a survivor annuity to an
21 individual under this subsection—

22 “(A) shall prospectively void any election made by
23 the employee or Member under section 8420 of this
24 title with respect to such individual; or

1 “(B) shall, if an election was made by the employ-
2 ee or Member under such section 8420 with respect to
3 a different individual, prospectively void such election if
4 appropriate written application is made by such em-
5 ployee or Member at the time of making the election
6 under this subsection.

7 “(4) Any election under this subsection made by an em-
8 ployee or Member on behalf of an individual after the retire-
9 ment of such employee or Member shall not be effective if—

10 “(A) the employee or Member was married to
11 such individual at the time of retirement; and

12 “(B) annuity rights of such individual based on the
13 service of such employee or Member were then waived
14 under subsection (a) of this section.

15 “(c)(1) An employee or Member who is unmarried at the
16 time of retiring under this chapter and who later marries may
17 irrevocably elect, in a signed writing received by the Office
18 within 2 years after such employee or Member marries or, if
19 later, within 2 years after the death or remarriage of any
20 former spouse of such employee or Member who was entitled
21 to a survivor annuity under section 8445 of this title (or of
22 the last such surviving former spouse, if there was more than
23 one), a reduction in the current annuity of the retired employ-
24 ee or Member, in accordance with section 8419(a) of this
25 title.

1 “(2)(A) The election and reduction shall take effect the
2 first day of the first month beginning 9 months after the date
3 of marriage. Any such election to provide a survivor annuity
4 for an individual—

5 “(i) shall prospectively void any election made by
6 the employee or Member under section 8420 of this
7 title with respect to such individual; or

8 “(ii) shall, if an election was made by the employ-
9 ee or Member under such section 8420 with respect to
10 a different individual, prospectively void such election if
11 appropriate written application is made by such em-
12 ployee or Member at the time of making the election
13 under this subsection.

14 **“§ 8417. Survivor reduction for a former spouse**

15 “(a) If an employee or Member has a former spouse who
16 is entitled to a survivor annuity as provided in section 8445
17 of this title, the reduction described in section 8419(a) of this
18 title shall be made.

19 “(b)(1) An employee or Member who has a former
20 spouse may elect, under procedures prescribed by the Office,
21 a reduction in the employee or Member's annuity under sec-
22 tion 8419(a) of this title in order to provide a survivor annu-
23 ity for such former spouse under section 8445 of this title.

24 “(2) An election under this subsection shall be made at
25 the time of retirement or, if later, within 2 years after the

1 date on which the marriage of the former spouse to the em-
2 ployee or Member is dissolved.

3 “(3) An election under this subsection—

4 “(A) shall not be effective to the extent that it—

5 “(i) conflicts with—

6 “(I) any court order or decree referred
7 to in section 8445(a) of this title which was
8 issued before the date of such election; or

9 “(II) any agreement referred to in such
10 section 8445(a) which was entered into
11 before such date; or

12 “(ii) would cause the total of survivor annu-
13 ities payable under sections 8442 and 8445 of this
14 title, respectively, based on the service of the em-
15 ployee or Member to exceed the amount which
16 would be payable to a widow or widower of such
17 employee or Member under such section 8442 (de-
18 termined without regard to any reduction to pro-
19 vide for an annuity under such section 8445); and

20 “(B) shall not be effective, in the case of an em-
21 ployee or Member who is then married, unless it is
22 made with the spouse's written consent.

23 The Office shall by regulation provide that subparagraph (B)
24 of this paragraph may be waived for either of the reasons set
25 forth in section 8416(a)(2) of this title.

1 “(4) In the case of a retired employee or Member whose
2 annuity is being reduced in order to provide a survivor annu-
3 ity for a former spouse, an election to provide or increase a
4 survivor annuity for any other former spouse (and to continue
5 an appropriate reduction) may be made within the same
6 period that, and subject to the same conditions under which,
7 an election could be made under section 8419(b)(2)(A) of this
8 title for a current spouse (subject to the provisions of para-
9 graph (3) of this subsection relating to consent of a current
10 spouse, if the retired employee or Member is then married).
11 The opportunity to make an election under the preceding
12 sentence is in addition to any opportunity otherwise afforded
13 under this subsection.

14 **“§ 8418. Survivor elections; deposit; offsets**

15 “(a)(1) An individual who makes an election under sub-
16 section (b) or (c) of section 8416 of this title or section
17 8417(b) of this title which is required to be made within 2
18 years after the date of a prescribed event shall deposit into
19 the Fund, before the expiration of the 2-year period involved,
20 an amount determined by the Office (as nearly as may be
21 administratively feasible) to reflect the amount by which the
22 annuity of such individual would have been reduced if the
23 election had been in effect since the date of retirement (or, if
24 later, and in the case of an election under such section
25 8416(b), since the date the previous reduction in the annuity

1 of such individual was terminated under paragraph (1) or (2)
2 of section 8419(b) of this title), plus interest.

3 “(2) Interest under paragraph (1) of this subsection shall
4 be computed at the rate of 6 percent a year.

5 “(b) If the electing individual does not make the re-
6 quired deposit under subsection (a) of this section, the Office
7 shall collect such amount by offset against such individual's
8 annuity, up to a maximum of 25 percent of the net annuity
9 otherwise payable, and the individual is deemed to consent to
10 such offset.

11 “(c) Subsections (a) and (b) of this section shall not
12 apply if—

13 “(1) the employee or Member makes an election
14 under section 8416(b) or (c) of this title after having
15 made an election under section 8420 of this title; and

16 “(2) the election under such section 8420 becomes
17 void under subsection (b)(3) or (c)(2) of such section
18 8416.

19 “(d) A deposit authorized by this section may also be
20 made by the survivor of an employee or Member.

21 **“§ 8419. Survivor reductions; computation**

22 “(a) In order to provide a survivor annuity (or a combi-
23 nation of survivor annuities) under section 8442 or 8445 of
24 this title (or both), the annuity of an annuitant computed
25 under section 8415 or 8452 of this title shall be reduced by

1 2½ percent of the first \$3,600 thereof plus 10 percent of so
2 much thereof as exceeds \$3,600.

3 “(b)(1) Any reduction in an annuity for the purpose of
4 providing a survivor annuity for the current spouse of a re-
5 tired employee or Member shall be terminated for each full
6 month—

7 “(A) after the death of the spouse; or

8 “(B) after the dissolution of the spouse’s marriage
9 to the employee or Member, except that an appropriate
10 reduction shall be made thereafter if the spouse is enti-
11 tled, as a former spouse, to a survivor annuity under
12 section 8445 of this title.

13 “(2) Any reduction in an annuity for the purpose of pro-
14 viding a survivor annuity for a former spouse of a retired
15 employee or Member shall be terminated for each full month
16 after the former spouse remarries before reaching age 55 or
17 dies. This reduction shall be replaced by appropriate reduc-
18 tions under subsection (a) of this section if the retired employ-
19 ee or Member has one or more of the following:

20 “(A) another former spouse who is entitled to a
21 survivor annuity under section 8445 of this title;

22 “(B) a current spouse to whom the employee or
23 Member was married at the time of retirement and
24 with respect to whom a survivor annuity was not joint-
25 ly waived under section 8416(a) of this title; or

1 “(C) a current spouse whom the employee or
2 Member married after retirement and with respect to
3 whom an election has been made under subsection (b)
4 or (c) of section 8416.

5 **“§ 8420. Insurable interest reductions**

6 “(a)(1) At the time of retiring under section 8412, 8413,
7 or 8414 of this title, an employee or Member who is found to
8 be in good health by the Office may elect a reduced annuity
9 instead of an annuity computed under section 8415 of this
10 title and name in writing an individual having an insurable
11 interest in the employee or Member to receive an annuity
12 under section 8444 of this title after the death of the retired
13 employee or Member.

14 “(2) The annuity of the employee or Member making
15 the election is reduced by 10 percent, and by 5 percent for
16 each full 5 years the individual named is younger than the
17 retiring employee or Member, except that the total reduction
18 may not exceed 40 percent.

19 “(3) An annuity which is reduced under this subsection
20 shall, effective the first day of the month following the death
21 of the individual named under this subsection, be recomputed
22 and paid as if the annuity had not been so reduced.

23 “(b) In the case of a married employee or Member, an
24 election under this section on behalf of the spouse may be
25 made only if any right of such spouse to a survivor annuity

1 based on the service of such employee or Member is waived
2 in accordance with section 8416(a) of this title.

3 **"§ 8421. Annuity supplement**

4 “(a)(1) An individual receiving an annuity under subsec-
5 tion (a), (b), (d), or (e) of section 8412 of this title is entitled
6 to receive an annuity supplement under this section while
7 such individual is under 62 years of age.

8 “(2) An individual receiving an annuity under section
9 8412(f) of this title, or under subsection (a) or (b) of section
10 8414 of this title, is entitled to receive an annuity supplement
11 under this section while such individual is at least 55 years of
12 age and under 62 years of age.

13 “(b)(1) The amount of the annuity supplement payable
14 to an annuitant under this section for any month shall be
15 equal to the product of—

16 “(A) an amount determined under paragraph (2),
17 multiplied by

18 “(B) a fraction, as described in paragraph (3).

19 “(2) The applicable amount under this paragraph for
20 any annuitant is an amount equal to the primary insurance
21 amount that would be determined for such annuitant under
22 section 215 of the Social Security Act, as of the date on
23 which such annuitant retires under this chapter, if on that
24 date such annuitant had attained age 62 and had made appli-
25 cation for old-age insurance benefits under section 202(a) of

1 such Act, except that for purposes of any determination
2 under this paragraph—

3 “(A) in computing total wages and self-employ-
4 ment income for a benefit computation year, only basic
5 pay for service performed during such year (if any)
6 shall be taken into account;

7 “(B) for a benefit computation year, any part of
8 which occurs after the date of the separation with re-
9 spect to which entitlement to the annuitant's annuity
10 under this subchapter is based, the total wages and
11 self-employment income of such annuitant for such
12 year shall be deemed to be an amount equal to the
13 total amount of such individual's basic pay (as de-
14 scribed in subparagraph (A)) for the last benefit compu-
15 tation year in which such individual performed a full
16 year of service;

17 “(C) for a benefit computation year which pre-
18 cedes the separation referred to in subparagraph (B),
19 and during which the individual did not perform a full
20 year of service, the total wages and self-employment
21 income of such annuitant for such year shall be deemed
22 to have been an amount equal to the product of—

23 “(i) the average total wages of all workers
24 for that year, multiplied by

25 “(ii) a fraction—

1 “(I) the numerator of which is total
2 basic pay of the individual for service per-
3 formed in the first benefit computation year
4 thereafter in which such individual performed
5 a full year of service; and

6 “(II) the denominator of which is the
7 average total wages of all workers for the
8 year referred to in subclause (I).

9 “(3) The applicable fraction under this paragraph for
10 any annuitant is a fraction—

11 “(A) the numerator of which is the annuitant's
12 total years of service (rounding a fraction to the near-
13 est whole number, with $\frac{1}{2}$ being rounded to the next
14 higher number), not to exceed the number under sub-
15 paragraph (B); and

16 “(B) the denominator of which is the number of
17 the annuitant's benefit computation years.

18 “(4) For the purpose of this subsection—

19 “(A) the term ‘benefit computation year’ has the
20 meaning provided in section 215(b)(2)(B)(i) of the
21 Social Security Act; and

22 “(B) the term ‘average total wages of all work-
23 ers’, for a year, means the average of the total wages,
24 as defined and computed under section

1 215(b)(3)(A)(ii)(I) of the Social Security Act for such
2 year.

3 “(c) Effective on January 1 of each year, the amount of
4 the annuity supplement payable to an individual under this
5 section shall be increased by the percentage increase, if any,
6 in the SSA average wage index (as defined in section
7 215(i)(1)(G) of the Social Security Act) published for Novem-
8 ber of the preceding year over such index published for No-
9 vember of the next preceding year.

10 **“§ 8422. Deductions and withholdings from pay**

11 “(a)(1) The employing agency shall deduct and withhold
12 from basic pay of each employee and Member a percentage of
13 basic pay determined in accordance with paragraph (2).

14 “(2) The applicable percentage under this subsection for
15 any pay period shall be—

16 “(A) in the case of an employee (other than a law
17 enforcement officer, firefighter, air traffic controller, or
18 Congressional employee), a percentage equal to—

19 “(i) 7 percent, reduced by

20 “(ii) the percentage then in effect under sec-
21 tion 3101(a) of the Internal Revenue Code of
22 1954 (relating to rate of tax for old-age, survi-
23 vors, and disability insurance); and

1 “(B) in the case of a Member, law enforcement of-
2 ficer, firefighter, air traffic controller, or Congressional
3 employee, a percentage equal to—

4 “(i) 7 ½ percent, reduced by

5 “(ii) the same percentage as would apply in
6 the case of an employee under subparagraph
7 (A)(ii).

8 “(b) Each employee or Member is deemed to consent
9 and agree to the deductions under this section. Notwithstand-
10 ing any law or regulation affecting the pay of an employee or
11 Member, payment less such deductions is a full and complete
12 discharge and acquittance of all claims and demands for regu-
13 lar services during the period covered by the payment, except
14 the right to any benefits under this subchapter, or under sub-
15 chapter IV or V of this chapter, based on the service of the
16 employee or Member (to the extent such benefits are attribut-
17 able to such deductions).

18 “(c) The amounts deducted and withheld under this sec-
19 tion shall be deposited in the Treasury of the United States
20 to the credit of the Fund under such procedures as the Comp-
21 troller General of the United States may prescribe.

22 “(d) Under such regulations as the Office may prescribe,
23 amounts deducted under subsection (a) of this section shall be
24 entered on individual retirement records.

1 **"§ 8423. Government contributions**

2 “(a)(1) Each employing agency having any employees or
3 Members subject to section 8422 of this title shall contribute
4 to the Fund an amount equal to the sum of—

5 “(A) the product of—

6 “(i) the normal-cost percentage, as deter-
7 mined for employees (other than employees cov-
8 ered by subparagraph (B) of this paragraph), mul-
9 tiplied by

10 “(ii) the aggregate amount of basic pay pay-
11 able by the agency for the period involved to em-
12 ployees (under clause (i) of this subparagraph)
13 who are within such agency; and

14 “(B) the product of—

15 “(i) the normal-cost percentage, as deter-
16 mined for Members, Congressional employees, law
17 enforcement officers, firefighters, and air traffic
18 controllers, multiplied by

19 “(ii) the aggregate amount of basic pay pay-
20 able by the agency for the period involved to em-
21 ployees and Members (under clause (i) of this sub-
22 paragraph) who are within such agency.

23 “(2) In determining any normal-cost percentage to be
24 applied under this subsection, amounts provided for under
25 section 8422 of this title and subsection (b) of this section
26 shall be taken into account.

1 “(3) Contributions under this subsection shall be paid—

2 “(A) in the case of law enforcement officers, fire-
3 fighters, air traffic controllers, and other employees,
4 from the appropriation or fund used to pay such law
5 enforcement officers, firefighters, air traffic controllers,
6 or other employees, respectively;

7 “(B) in the case of elected officials, from an ap-
8 propriation or fund available for payment of other sala-
9 ries of the same office or establishment; and

10 “(C) in the case of employees of the legislative
11 branch paid by the Clerk of the House of Representa-
12 tives, from the contingent fund of the House.

13 “(b)(1) The Secretary of Defense shall contribute to the
14 Fund, from any appropriation available to the Secretary of
15 Defense for the payment of pay for members of the armed
16 forces, amounts determined under paragraph (2) of this
17 subsection.

18 “(2) The Office shall determine, in accordance with reg-
19 ulations prescribed by the Office consistent with provisions of
20 this subchapter (and regulations thereunder) relating to
21 normal-cost percentages, the amount of any contributions re-
22 quired in order to fund benefits payable under this subchapter
23 (and related benefits under subchapters IV and V of this
24 chapter) to the extent that those benefits are attributable to
25 service described in section 8411(b)(2) of this title.

1 “(c) A contribution to the Fund under subsection (a) or
2 (b) of this section shall be deposited under such procedures as
3 the Comptroller General of the United States may prescribe.

4 “(d)(1) The Office shall compute—

5 “(A) the amount of the supplemental liability of
6 the Fund with respect to individuals other than those
7 to whom subparagraph (B) of this paragraph relates;
8 and

9 “(B) the amount of the supplemental liability of
10 the Fund with respect to current or former employees
11 of the United States Postal Service and their survivors;
12 as of the close of each fiscal year beginning after September
13 30, 1987.

14 “(2) The amount of any supplemental liability computed
15 under paragraph (1)(A) or (2)(A) of this subsection shall be
16 amortized in 30 equal annual installments with interest com-
17 puted at the rate used in the most recent valuation of the
18 System.

19 “(3) At the end of each fiscal year, the Office shall
20 notify—

21 “(A) the Secretary of the Treasury of the amount
22 of the installment computed under this subsection for
23 such year with respect to individuals under paragraph
24 (1)(A) of this subsection; and

1 “(B) the Postmaster General of the United States
2 of the amount of the installment computed under this
3 subsection for such year with respect to individuals
4 under paragraph (1)(B) of this subsection.

5 “(4)(A) Before closing the accounts for a fiscal year, the
6 Secretary of the Treasury shall credit to the Fund, as a Gov-
7 ernment contribution, out of any money in the Treasury of
8 the United States not otherwise appropriated, the amount
9 under paragraph (3)(A) of this subsection for such year.

10 “(B) Upon receiving notification under paragraph (3)(B)
11 of this subsection, the United States Postal Service shall pay
12 the amount specified in such notification to the Fund.

13 “(5) For the purpose of carrying out paragraph (1) of
14 this subsection with respect to any fiscal year, the Office
15 may—

16 “(A) require the Board of Actuaries of the Civil
17 Service Retirement System to make actuarial determi-
18 nations and valuations, make recommendations, and
19 maintain records in the same manner as provided in
20 section 8347(f) of this title; and

21 “(B) may use the latest actuarial determinations
22 and valuations made by such Board of Actuaries.

1 **"§ 8424. Lump-sum benefits; designation of beneficiary;**
2 **order of precedence**

3 "(a) Subject to subsection (b) of this section, an em-
4 ployee or Member who—

5 "(1)(A) is separated from the service for at least
6 31 consecutive days; or

7 "(B) is transferred to a position in which the indi-
8 vidual is not subject to this chapter and remains in
9 such a position for at least 31 consecutive days;

10 "(2) files an application with the Office for pay-
11 ment of the lump-sum credit;

12 "(3) is not reemployed in a position in which the
13 individual is subject to this chapter at the time of filing
14 the application; and

15 "(4) will not become eligible to receive an annuity
16 within 31 days after filing the application;

17 is entitled to be paid the lump-sum credit. Any annuity under
18 this subchapter, or under subchapter IV or V of this chapter,
19 based on the service of an individual to whom payment of the
20 lump-sum credit is made shall be actuarially reduced, under
21 regulations prescribed by the Office, to reflect such payment.

22 "(b)(1) Payment of the lump-sum credit under subsec-
23 tion (a) of this section—

24 "(A) may be made only if any current spouse and
25 any former spouse of the employee or Member are no-

1 tified of the application by the employee or Member;
2 and

3 “(B) in any case in which there is a former
4 spouse, shall be subject to the terms of a court decree
5 of divorce, annulment, or legal separation issued with
6 respect to such former spouse if—

7 “(i) the decree expressly relates to any por-
8 tion of the lump-sum credit involved; and

9 “(ii) payment of the lump-sum credit would
10 affect any right or interest of the former spouse to
11 a survivor annuity under section 8445 of this title,
12 or to any portion of an annuity under section
13 8467 of this title.

14 “(2)(A) Notification of a spouse or former spouse under
15 this subsection shall be made in accordance with such re-
16 quirements as the Office shall by regulation prescribe.

17 “(B) Under the regulations, the Office may provide that
18 paragraph (1)(A) of this subsection may be waived with re-
19 spect to a spouse or former spouse if the employee or
20 Member establishes to the satisfaction of the Office that the
21 whereabouts of such spouse or former spouse cannot be de-
22 termined.

23 “(3) The Office shall prescribe regulations under which
24 this subsection shall be applied in any case in which the

1 Office receives two or more orders or decrees referred to in
2 paragraph (1)(B)(i) of this subsection.

3 “(c) Under regulations prescribed by the Office, an em-
4 ployee or Member, or a former employee or Member, may
5 designate one or more beneficiaries under this section.

6 “(d) Lump-sum benefits authorized by subsections (e)
7 through (g) of this section shall be paid to the individual or
8 individuals surviving the employee or Member and alive at
9 the date title to the payment arises in the following order of
10 precedence, and the payment bars recovery by any other
11 individual:

12 “First, to the beneficiary or beneficiaries designat-
13 ed by the employee or Member in a signed and wit-
14 nessed writing received in the Office before the death
15 of such employee or Member. For this purpose, a des-
16 ignation, change, or cancellation of beneficiary in a will
17 or other document not so executed and filed has no
18 force or effect.

19 “Second, if there is no designated beneficiary, to
20 the widow or widower of the employee or Member.

21 “Third, if none of the above, to the child or chil-
22 dren of the employee or Member and descendants of
23 deceased children by representation.

24 “Fourth, if none of the above, to the parents of
25 the employee or Member or the survivor of them.

1 "Fifth, if none of the above, to the duly appointed
2 executor or administrator of the estate of the employee
3 or Member.

4 "Sixth, if none of the above, to such other next of
5 kin of the employee or Member as the Office deter-
6 mines to be entitled under the laws of the domicile of
7 the employee or Member at the date of death of the
8 employee or Member.

9 For the purpose of this subsection, 'child' includes a natural
10 child and an adopted child, but does not include a stepchild.

11 "(e) If an employee or Member, or former employee or
12 Member, dies—

13 "(1) without a survivor; or

14 "(2) with a survivor or survivors and the right of
15 all survivors under subchapter IV of this chapter ter-
16 minates before a claim for survivor annuity under such
17 subchapter is filed the lump-sum credit shall be paid.

18 "(f) If all annuity rights under this chapter based on the
19 service of a deceased employee or Member terminate before
20 the total annuity paid equals the lump-sum credit, the differ-
21 ence shall be paid.

22 "(g) If an annuitant dies, annuity accrued and unpaid
23 shall be paid.

24 "(h) Annuity accrued and unpaid on the termination,
25 except by death, of the annuity of an annuitant or survivor

1 annuitant shall be paid to that individual. Annuity accrued
2 and unpaid on the death of a survivor annuitant shall be paid
3 in the following order of precedence, and the payment bars
4 recovery by any other person:

5 "First, to the duly appointed executor or adminis-
6 trator of the estate of the survivor annuitant.

7 "Second, if there is no executor or administrator,
8 payment may be made, after 30 days from the date of
9 death of the survivor annuitant, to such next of kin of
10 the survivor annuitant as the Office determines to be
11 entitled under the laws of the domicile of the survivor
12 annuitant at the date of death.

13 **"§ 8425. Mandatory separation**

14 "(a) An air traffic controller shall be separated from the
15 service on the last day of the month in which that controller
16 becomes 56 years of age. The Secretary, under such regula-
17 tions as the Secretary may prescribe, may exempt a control-
18 ler having exceptional skills and experience as a controller
19 from the automatic separation provisions of this subsection
20 until that controller becomes 61 years of age. The Secretary
21 shall notify the controller in writing of the date of separation
22 at least 60 days before that date. Action to separate the con-
23 troller is not effective, without the consent of the controller,
24 until the last day of the month in which the 60-day notice
25 expires.

1 “(b) A law enforcement officer or a firefighter who is
2 otherwise eligible for immediate retirement under section
3 8412(d) of this title shall be separated from the service on the
4 last day of the month in which that law enforcement officer
5 or firefighter (as the case may be) becomes 55 years of age or
6 completes 20 years of service if then over that age. If the
7 head of the agency judges that the public interest so requires,
8 that agency head may exempt such an employee from auto-
9 matic separation under this subsection until that employee
10 becomes 60 years of age. The employing office shall notify
11 the employee in writing of the date of separation at least 60
12 days before that date. Action to separate the employee is not
13 effective, without the consent of the employee, until the last
14 day of the month in which the 60-day notice expires.

15 “(c) The President, by Executive order, may exempt an
16 employee from automatic separation under this section if the
17 President determines the public interest so requires.

18 **“SUBCHAPTER III—THRIFT SAVINGS PLAN**

19 **“§ 8431. Definitions**

20 **“For the purpose of this subchapter—**

21 “(1) the term ‘employee’ means an employee as
22 defined by section 8331(1) or 8401(11) of this title; and

23 “(2) the term ‘Member’ means a Member as de-
24 fined by section 8331(2) or 8401(20) of this title.

1 **"§ 8432. Contributions**

2 “(a)(1) For any pay period with respect to which an
3 election by an employee or Member under subsection (b) is in
4 effect, there shall be deducted and withheld from the basic
5 pay of such employee or Member an amount determined in
6 accordance with such election.

7 “(2)(A) Subject to subparagraph (B), an amount equal to
8 the lesser of—

9 “(i) 50 percent of the amount so deducted and
10 withheld from basic pay of the employee or Member; or

11 “(ii) 3 percent of basic pay of the employee or
12 Member for the period involved;

13 shall be contributed by the employing agency from the appro-
14 priation or fund used to pay the employee or, in the case of
15 an elected official, from an appropriation or fund available for
16 payment of other salaries of the same office or establishment.
17 When an employee in the legislative branch is paid by the
18 Clerk of the House of Representatives, the Clerk may pay
19 from the contingent fund of the House the contribution that
20 otherwise would be contributed from the appropriation or
21 fund used to pay the employee.

22 “(B) A contribution under this paragraph shall not be
23 made in the case of an employee or Member who is subject to
24 chapter 83 of this title.

25 “(3) Any amounts so deducted and withheld from pay of
26 an employee or Member, together with any amounts so con-

1 tributed with respect to such employee or Member, shall be
2 deposited in the Thrift Savings Fund to the credit of that
3 individual's account in accordance with such procedures as
4 the Comptroller General of the United States may by regula-
5 tion prescribe.

6 “(b)(1)(A) The Board shall prescribe regulations under
7 which employees and Members shall be afforded a reasonable
8 period, at least once every 6 months, to elect to commence or
9 terminate withholdings under subsection (a)(1), or to amend
10 the amount to be withheld under such subsection.

11 “(B) The amount to be withheld for a pay period pursu-
12 ant to such an election shall be a percentage (not to exceed
13 10 percent) of basic pay designated by the employee or
14 Member, and the percentage so designated shall be a whole
15 number.

16 “(2) Under the regulations—

17 “(A) an employee or Member who has not previ-
18 ously been eligible to make an election under this sub-
19 section shall not become so eligible until the second
20 period (described in paragraph (1)) beginning after the
21 date of commencing service as such an employee or
22 Member;

23 “(B) an employee or Member whose appointment
24 or election follows a previous period of service during
25 which that individual met the requirements of subpara-

1 graph (A) shall be eligible to make an election under
2 this subsection notwithstanding any period of
3 separation;

4 “(C) an employee or Member who elects under
5 subparagraph (D) to terminate withholdings shall not
6 again become eligible to make an election under this
7 subsection until the second period (described in para-
8 graph (1)) after the election to terminate; and

9 “(D) an election to terminate made at a time
10 other than during a period afforded under paragraph
11 (1) may be made at any time in a calendar year, but
12 shall not be effective if the employee or Member has
13 made another such election under this subparagraph in
14 the same calendar year.

15 **“§ 8433. Benefits**

16 “(a) Amounts in the account of an employee or Member
17 shall be payable in accordance with the method of payment
18 applicable under subsection (b).

19 “(b)(1) The Board shall prescribe regulations under
20 which an employee or Member may, at the time of separa-
21 tion, elect a method of payment described in paragraph (2).

22 “(2) Under the regulations, the methods of payment
23 shall include—

24 “(A) the payment of an amount (whether as a
25 single lump-sum payment or on an installment basis)

1 equal to the value of the individual's account, deter-
2 mined as of the election date;

3 “(B) a method which provides for the payment of
4 an annuity to the employee or Member for life;

5 “(C) a method which provides for the payment of
6 an annuity to the employee or Member for life, with a
7 survivor annuity payable for the life of a surviving
8 spouse equal to one-half of the annuity of the employee
9 or Member; and

10 “(D) a method which provides for the payment of
11 an annuity to the employee or Member for life, with a
12 survivor annuity payable for the life of a surviving indi-
13 vidual designated by the employee or Member as an in-
14 dividual having an insurable interest in the employee
15 or Member.

16 Each of the methods described in subparagraphs (B), (C), and
17 (D), respectively, shall include options relating to—

18 “(i) periodic adjustments in annuity amount; and

19 “(ii) deferred commencement of payments.

20 “(3) The election of a method described in paragraph
21 (2)(B), (C), or (D), on a deferred basis (as described in para-
22 graph (2)(ii)) shall be modifiable in accordance with such pro-
23 cedures as the Board shall prescribe, except that a modifica-
24 tion under this paragraph—

1 “(A) may not be made after the 30th day before
2 the date on which payments under the earlier election
3 are to commence;

4 “(B) shall not be effective to the extent that it
5 would require the commencement of payments before
6 the 30th day after the date of modification; and

7 “(C) may not be made if it would be inconsistent
8 with the purposes of subsection (c).

9 “(c)(1) Notwithstanding the provisions of subsection (b),
10 the method described in paragraph (2)(C) of such subsection
11 (or, if more than one form of such method is available, the
12 form which the Board determines to be the one most closely
13 approximating the annuity of a surviving spouse under sec-
14 tion 8341 or 8442 of this title, as appropriate) shall be
15 deemed the applicable method under such subsection in the
16 case of an employee or Member who is married at the time of
17 separation.

18 “(2) Paragraph (1) shall not apply—

19 “(A) in the case of an employee or Member retir-
20 ing under section 8336, 8337, 8412, 8414, or 8451 of
21 this title if—

22 “(i) a joint waiver of such method is made, in
23 writing, by the employee or Member and the
24 spouse; or

1 “(ii) if the employee or Member waives such
2 method, in writing, after establishing to the satis-
3 faction of the Board that circumstances described
4 in section 8416(a)(2) of this title make the re-
5 quirement of a joint waiver inappropriate; or

6 “(B) in the case of an employee or Member not
7 covered by subparagraph (A), if the employee or
8 Member waives such method after—

9 “(i) having provided notification to the
10 spouse (in accordance with procedures prescribed
11 by the Board) of intent to waive; or

12 “(ii) establishing to the satisfaction of the
13 Board that the circumstance described in section
14 8424(b)(2)(B) of this title makes the requirement
15 of such notification inappropriate.

16 “(d) If an employee or Member (or a former employee or
17 Member) dies without having made an election under this
18 section, an amount equal to the value of that individual's ac-
19 count (as of death) shall be paid in a manner consistent with
20 section 8424(d) of this title.

21 “(e)(1) At any time before separation, an employee or
22 Member may apply to the Board for permission to withdraw
23 or borrow from the account of the employee or Member an
24 amount not exceeding the value of that portion of such ac-

1 count which is attributable to contributions of the employee
2 or Member under section 8432(a)(1) of this title.

3 “(2) An application under this subsection may not be
4 approved, except for—

5 “(A) the purchase of a primary residence;

6 “(B) educational expenses;

7 “(C) medical expenses; or

8 “(D) financial hardship.

9 “(f) Notwithstanding any other provision of this sub-
10 chapter—

11 “(1) an election under this subchapter shall not be
12 effective if the election would result in a violation of
13 the terms of an applicable court decree of divorce, an-
14 nulment, or legal separation, or the terms of any court
15 order or court-approved property settlement agreement
16 incident to a court decree of divorce, annulment, or
17 legal separation, as determined by the Executive Di-
18 rector; and

19 “(2) an application under subsection (e) for a loan
20 or withdrawal shall not be approved if approval would
21 have the result described in paragraph (1).

22 “(g) The Board may, in accordance with regulations
23 prescribed by the Board, contract with a qualified insurance
24 company or other person to provide for annuities under this
25 subchapter.

1 **"§ 8434. Thrift Savings Fund**

2 “(a) There is established in the Treasury of the United
3 States a Thrift Savings Fund.

4 “(b) The Thrift Savings Fund consists of the sum of all
5 amounts contributed under section 8432 of this title, in-
6 creased by the total net earnings from investments of sums in
7 the Thrift Savings Fund or reduced by the total net losses
8 from investments of the Thrift Savings Fund.

9 “(c) The sums in the Thrift Savings Fund are appropri-
10 ated and shall remain available without fiscal year limita-
11 tion—

12 “(1) to invest under section 8436 of this title;

13 “(2) to pay benefits under this subchapter; and

14 “(3) to pay the administrative expenses of the
15 Civil Service Thrift Investment Management System
16 under subchapter VII of this chapter.

17 “(d)(1) Sums in the Thrift Savings Fund—

18 “(A) shall not be subject to assignment by
19 the employee or Member; and

20 “(B) except as provided in paragraph (2) of
21 this subsection or section 8467 of this title, shall
22 not be subject to execution, levy, attachment, gar-
23 nishment, or other legal process.

24 “(2) Moneys due or payable from the Thrift Savings
25 Fund to any individual shall be subject to legal process for
26 the enforcement of the individual's legal obligations to pro-

1 vide child support or make alimony payments as provided in
2 section 459 of the Social Security Act or to pay any indebt-
3 edness of the individual to the United States.

4 **"§ 8435. Accounting**

5 “(a)(1) The Executive Director shall establish and main-
6 tain an account for each employee or Member making contri-
7 butions under section 8432(a) of this title.

8 “(2) The balance in the account of an employee or
9 Member (or a former employee or Member) at any time is the
10 excess of—

11 “(A) the sum of—

12 “(i) all contributions made to the Thrift Sav-
13 ings Fund by the individual under section
14 8432(a)(1) of this title;

15 “(ii) all contributions made to the Thrift Sav-
16 ings Fund for the benefit of the individual under
17 section 8432(a)(2) of this title; and

18 “(iii) the total amount of the allocations
19 made to and reductions made in the account pur-
20 suant to paragraph (3), over

21 “(B) the amounts paid out of the Thrift Savings
22 Fund with respect to the individual under this subchap-
23 ter.

24 “(3) Under regulations prescribed by the Board, the Ex-
25 ecutive Director shall allocate to the account of each employ-

1 ee or Member (or former employee or Member) an amount
2 equal to a pro rata share of the net earnings and net losses
3 from each investment of sums in the Thrift Savings Fund
4 attributable to sums credited to the account of that individual,
5 reduced by an appropriate share of the administrative ex-
6 penses of the Civil Service Thrift Investment Management
7 System described in subchapter VII of this chapter, as deter-
8 mined by the Executive Director.

9 “(b)(1) For the purposes of this subsection, the term
10 ‘qualified public accountant’ shall have the same meaning as
11 provided in section 103(a)(3)(D) of the Employee Retirement
12 Income Security Act of 1974.

13 “(2) The Executive Director shall annually engage an
14 independent qualified public accountant, who shall conduct an
15 examination of any accounts established under subsection (a)
16 and of other books and records maintained in the administra-
17 tion of this subchapter and subchapter VII of this chapter as
18 the accountant considers necessary to enable the accountant
19 to make the determination required by paragraph (3). The
20 examination shall be conducted in accordance with generally
21 accepted auditing standards and shall involve such tests of
22 the accounts, books, and records as the independent qualified
23 public accountant considers necessary.

24 “(3) The independent qualified public accountant con-
25 ducting an examination under paragraph (2) shall determine

1 whether the accounts, books, and records referred to in such
2 paragraph have been maintained in conformity with generally
3 accepted accounting principles applied on a basis consistent
4 with the application of such principles during the examination
5 conducted under such paragraph during the preceding year.
6 The accountant shall transmit to the Board a report on his
7 examination, including his determination under this para-
8 graph.

9 “(4) In making a determination under paragraph (3), the
10 accountant may rely on the correctness of any actuarial
11 matter certified by an enrolled actuary if the accountant
12 states his reliance in the report transmitted to the Board
13 under such paragraph.

14 **“§ 8436. Investments**

15 “(a) The Board shall establish the following investment
16 options;

17 “(1) A Government Securities Investment Fund
18 under which sums are invested by the Board in inter-
19 est-bearing obligations of the United States Govern-
20 ment described in subsection (e) of this section.

21 “(2) A Fixed-Income Investment Fund under
22 which sums are invested in guaranteed interest con-
23 tracts, or other suitable instruments and obligations,
24 designed to return a specified rate or rates of interest
25 during a specified period of time on all sums invested.

1 “(3) An Indexed Equity Fund invested in common
2 stocks representative of the overall performance of
3 United States equity markets by distributing the in-
4 vestments in specific stocks in the same proportion as
5 used in a commonly recognized index of common
6 stocks.

7 “(4) An Indexed Bond Fund invested in corporate
8 bonds representative of the overall performance of
9 United States corporate bonds by distributing the in-
10 vestments in specific bonds in the same proportion as
11 used in a commonly recognized index of corporate
12 bonds.

13 “(5) A Diversified Equity Investment Account
14 based on a commingled portfolio of common stocks, de-
15 signed to achieve a superior total rate of return over
16 an extended period of time, without exposing the assets
17 of the account to excessive volatility.

18 “(6) A Diversified Bond Investment Account
19 based on a commingled portfolio of publicly-traded cor-
20 porate bonds, designed to achieve a superior total rate
21 of return consistent with the preservation of the capital
22 value of the amounts invested.

23 “(b) Except as provided in subsection (d), amounts in
24 the Thrift Savings Fund available for investment shall be in-

1 vested by the Executive Director in accordance with elec-
2 tions made under subsection (c).

3 “(c)(1) The Board shall prescribe regulations under
4 which an employee or Member (or a former employee or
5 Member) may elect the investment option (or combination of
6 options) under subsection (a) into which amounts in the ac-
7 count of the individual (including amounts to be contributed
8 under section 8432 of this title) shall be invested or
9 reinvested.

10 “(2) Under the regulations—

11 “(A) an election with respect to the allocation or
12 reallocation of amounts in an account among invest-
13 ment options shall be made in units equal to 10 per-
14 cent of the total amount available in such account;

15 “(B) an election with respect to the allocation of
16 amounts to be contributed under paragraphs (1) and (2)
17 of section 8432(a) of this title after the effective date of
18 the election (or the modification of an election under
19 this subparagraph) shall be made in units equal to 25
20 percent of the total to be so contributed for each pay
21 period; and

22 “(C) elections under this subsection shall be al-
23 lowed at the same time during each year that elections
24 under section 8432(b) of this title are allowed.

1 “(d) Notwithstanding any other provision of this section,
2 any contributions under section 8432(a)(2) of this title made
3 with respect to pay periods beginning before January 1,
4 1992, and any earnings attributable to those contributions—

5 “(1) shall be invested in the Government Securi-
6 ties Investment Fund, described in subsection (a)(1);
7 and

8 “(2) shall not be subject to allocation or realloca-
9 tion under subsection (c)(2)(A) before June 30, 1992.

10 “(e) The Secretary of the Treasury is authorized to
11 issue special interest-bearing obligations of the United States
12 for purchase by the Thrift Savings Fund. Obligations issued
13 for the purpose of this subsection shall have maturities fixed
14 with due regard to the needs of such fund as determined by
15 the Executive Director, and shall bear interest at a rate
16 equal to the average market yield (computed by the Secre-
17 tary of the Treasury on the basis of market quotations as of
18 the end of the calendar month next preceding the date of
19 issue of such obligations) on all marketable interest-bearing
20 obligations of the United States then forming a part of the
21 public debt which are not due or callable until after the expi-
22 ration of 4 years from the end of such calendar month. Any
23 such average market yield which is not a multiple of one-
24 eighth of 1 percent, shall be rounded to the nearest multiple
25 of one-eighth of 1 percent.

1 **“§ 8437. Information**

2 “(a) The Board shall prescribe regulations under which
3 employees and Members (and former employees and Mem-
4 bers) shall be furnished with—

5 “(1) a periodic statement relating to the individ-
6 ual’s account; and

7 “(2) a summary description and evaluation relat-
8 ing to each of the investment options under section
9 8436(a) of this title covering the 5-year period preced-
10 ing the date as of which such evaluation is made.

11 “(b) Information under this section shall be provided at
12 least 30 calendar days before each period described in section
13 8432(b)(1)(A) of this title, and in a manner designed to facili-
14 tate informed decisionmaking with respect to elections under
15 sections 8432 and 8436 of this title.

16 **“SUBCHAPTER IV—SURVIVOR ANNUITIES**

17 **“§ 8441. Definitions**

18 “For the purpose of this subchapter—

19 “(1) the term ‘widow’ means the surviving wife of
20 an annuitant, employee, or Member, or former em-
21 ployee or Member who—

22 “(A) was married to him for at least 9
23 months immediately before his death; or

24 “(B) is the mother of issue by that marriage;

1 “(2) the term ‘widower’ means the surviving hus-
2 band of an annuitant, employee, or Member, or former
3 employee or Member who—

4 “(A) was married to her for at least 9
5 months immediately before her death; or

6 “(B) is the father of issue by that marriage;

7 “(3) the term ‘dependent’, in the case of any
8 child, means that the annuitant, employee, or Member
9 involved was, at the time of the annuitant, employee,
10 or Member’s death, either living with or contributing to
11 the support of such child, as determined in accordance
12 with such regulations as the Office shall prescribe; and

13 “(4) the term ‘child’ means—

14 “(A) an unmarried dependent child under 18
15 years of age, including (i) an adopted child, (ii) a
16 stepchild but only if the stepchild lived with the
17 annuitant, employee, or Member in a regular
18 parent-child relationship, (iii) a recognized natural
19 child, and (iv) a child who lived with and for
20 whom a petition of adoption was filed by an annu-
21 itant, employee, or Member, and who is adopted
22 by the widow or widower of the annuitant, em-
23 ployee, or Member after the death of such annui-
24 tant, employee, or Member;

1 “(B) such unmarried dependent child regard-
2 less of age who is incapable of self-support be-
3 cause of mental or physical disability incurred
4 before age 18; or

5 “(C) such unmarried dependent child be-
6 tween 18 and 22 years of age who is a student
7 regularly pursuing a full-time course of study or
8 training in residence in a high school, trade
9 school, technical or vocational institute, junior col-
10 lege, college, university, or comparable recognized
11 educational institution.

12 For the purpose of this paragraph and section 8443 of
13 this title, a child whose 22nd birthday occurs before
14 July 1 or after August 31 of a calendar year, and
15 while regularly pursuing such a course of study or
16 training, is deemed to have become 22 years of age on
17 the first day of July after that birthday. A child who is
18 a student is deemed not to have ceased to be a student
19 during an interim between school years if the interim is
20 not more than 5 months and if such child shows to the
21 satisfaction of the Office that such child has a bona fide
22 intention of continuing to pursue a course of study or
23 training in the same or different school during the
24 school semester (or other period into which the school
25 year is divided) immediately after the interim.

1 **"§ 8442. Rights of a widow or widower**

2 “(a)(1) If an annuitant dies and is survived by a widow
3 or widower, the widow or widower is entitled to an annuity
4 equal to 50 percent of the annuity of the employee or
5 Member (as computed under section 8415 of this title),
6 unless—

7 “(A) the right to an annuity was waived under
8 section 8416(a) of this title; or

9 “(B) in the case of a marriage after retirement,
10 the annuitant did not file an election under section
11 8416 (b) or (c) of this title, as the case may be.

12 “(2) A spouse acquired after retirement is entitled to an
13 annuity under this subsection (as provided in paragraph (1) of
14 this subsection) only upon electing this annuity instead of any
15 other survivor benefit to which such spouse may be entitled
16 under this subchapter or section 8424 of this title or under
17 another retirement system for Government employees.

18 “(b) If an employee or Member dies after completing at
19 least 18 months of civilian service creditable under section
20 8411 of this title and is survived by a widow or widower, the
21 widow or widower is entitled to an annuity equal to 50 per-
22 cent of the annuity of the employee or Member (as computed
23 under section 8415 of this title).

24 “(c) If a former employee or Member dies after having
25 separated from the service with title to a deferred annuity
26 under section 8413 of this title but before having established

1 a valid claim for annuity, and is survived by a widow or
2 widower to whom married on the date of separation, the
3 widow or widower is entitled to an annuity equal to 50 per-
4 cent of the annuity of the employee or Member (as computed
5 under section 8415 of this title).

6 “(d)(1) The annuity of a widow or widower under this
7 section commences on the day after the death of the individ-
8 ual on whose service such annuity is based. This annuity and
9 the right thereto terminate on the last day of the month
10 before the widow or widower—

11 “(A) dies; or

12 “(B) remarries before becoming 55 years of age.

13 “(2) In the case of a widow or widower whose annuity
14 under this section is terminated because of remarriage before
15 becoming 55 years of age, annuity at the same rate shall be
16 restored commencing on the day the remarriage is dissolved
17 by death, annulment, or divorce, if—

18 “(A) the widow or widower elects to receive this
19 annuity instead of any other survivor benefit to which
20 such widow or widower may be entitled under this sub-
21 chapter or section 8424 of this title or under another
22 retirement system for Government employees by
23 reason of the remarriage; and

24 “(B) any lump-sum credit paid on termination of
25 the annuity is returned to the Fund.

1 “(3) Notwithstanding any other provision of this section,
2 the annuity payable under this section to a widow or widower
3 may not exceed the difference between—

4 “(A) the amount which would otherwise be pay-
5 able to such widow or widower under this section; and

6 “(B) the amount of the annuity payable to any
7 former spouse of the deceased annuitant, employee, or
8 Member, or deceased former employee or Member,
9 based on an election previously made under section
10 8417(b) of this title or a court order previously issued
11 or agreement previously entered into as described in
12 section 8445(a) of this title.

13 “(e) The requirement in paragraphs (1)(A) and (2)(A) of
14 section 8441 of this title that the widow or widower of an
15 annuitant, employee, or Member, or of a former employee or
16 Member, have been married to such individual for at least 9
17 months immediately before the death of the individual in
18 order to qualify as the widow or widower of such individual
19 shall be deemed satisfied in any case in which the individual
20 dies within the applicable 9-month period, if—

21 “(1) the death of the individual was accidental; or

22 “(2) the surviving spouse of the individual had
23 been previously married to such individual and subse-
24 quently divorced, and the aggregate time married is at
25 least 9 months.

1 “(f)(1) Subject to paragraph (3), a survivor who is re-
2 ceiving an annuity under subsection (a) or (b) for any month
3 shall also be entitled to an annuity supplement under this
4 subsection for such month equal to the lesser of—

5 “(A) the amount by which—

6 “(i) the survivor’s assumed CSRS annuity
7 exceeds

8 “(ii) the annuity payable to such survivor for
9 such month under subsection (a) or (b), as the
10 case may be; or

11 “(B) the amount described in paragraph (2).

12 “(2)(A) Except as provided in subparagraph (B), the ap-
13 plicable amount under this paragraph for a survivor is the
14 amount of widow’s or widower’s insurance benefits which
15 would be payable to such survivor under title II of the Social
16 Security Act based on the wages and self-employment
17 income of the deceased employee or Member, and deter-
18 mined—

19 “(i) as of the date on which the employee or
20 Member died; and

21 “(ii) as if the survivor had attained age 60 and
22 made application for those benefits under subsection (e)
23 or (f) of section 202 of such Act, as the case may be.

24 “(B) Any computation or determination under this para-
25 graph shall be made in accordance with the applicable provi-

1 sions of the Social Security Act, except that in computing
2 any primary insurance amount under section 215 of such Act
3 for purposes of determining an amount payable under this
4 subsection, subparagraphs (A) and (C) of section 8421(b)(2) of
5 this title shall apply.

6 “(3) An annuity supplement under this subsection—

7 “(A) shall be payable to a survivor only for calen-
8 dar months ending before the calendar month in which
9 such survivor first satisfies the minimum age require-
10 ment under section 202(e)(1)(B) or 202(f)(1)(B) of the
11 Social Security Act, as the case may be;

12 “(B) shall not be payable to a survivor who would
13 not be entitled to benefits under subsection (e) or (f) of
14 section 202 of the Social Security Act based on the
15 wages and self-employment income of the deceased
16 employee or Member (determined, as of the date of the
17 employee or Member's death, as if the survivor had at-
18 tained age 60 and made appropriate application for
19 benefits, but without regard to any restriction under
20 either such subsection relating to remarriage); and

21 “(C) shall not be payable to a survivor for any
22 calendar month in which such survivor is entitled (or
23 would, on proper application, be entitled) to benefits
24 under section 202(g) of the Social Security Act (relat-
25 ing to mother's and father's insurance benefits) based

1 on the wages and self-employment income of the de-
2 ceased employee or Member.

3 “(4) For the purpose of this subsection, the term ‘as-
4 sumed CSRS annuity’, as used with respect to a survivor,
5 means the amount of the annuity which would be payable to
6 such survivor for any month under section 8341 of this title,
7 determined as if the service of the deceased employee or
8 Member were creditable under subchapter III of chapter 83
9 of this title.

10 **“§ 8443. Rights of a child**

11 “(a)(1) If an employee or Member dies after completing
12 at least 18 months of civilian service which is creditable
13 under section 8411 of this title, or an annuitant dies, each
14 surviving child is, for any month, entitled to an annuity equal
15 to the amount by which the applicable amount under para-
16 graph (2) for such month exceeds the applicable amount
17 under paragraph (3) for such month.

18 “(2) The applicable amount under this paragraph for
19 any surviving child of an annuitant, employee, or Member is
20 the amount to which such child would be entitled under sub-
21 chapter III of chapter 83 of this title based on the service of
22 such annuitant, employee, or Member, and determined as if
23 the service of such annuitant, employee, or Member were
24 creditable under such subchapter.

1 “(3) The applicable amount under this paragraph for
2 any surviving child of an annuitant, employee, or Member is
3 the amount of child’s insurance benefits which would be pay-
4 able to such child under title II of the Social Security Act
5 (determined after the application of section 203(a) of such
6 Act) based on the wages and self-employment income of such
7 annuitant, employee, or Member.

8 “(b) The annuity of a child under this subchapter—

9 “(1) commences on the day after the annuitant,
10 employee, or Member dies;

11 “(2) commences or resumes on the first day of the
12 month in which the child later becomes or again be-
13 comes a student as described by section 8441(4) of this
14 title; or

15 “(3) commences or resumes on the first day of the
16 month in which the child later becomes or again be-
17 comes incapable of self-support because of a mental or
18 physical disability incurred before age 18 (or a later re-
19 currence of such disability);

20 if any lump-sum credit paid is returned to the Fund. This
21 annuity and the right thereto terminate on the last day of the
22 month before the child—

23 “(A) becomes 18 years of age unless then a stu-
24 dent as described or incapable of self-support;

1 “(B) becomes capable of self-support after becom-
2 ing 18 years of age unless then such a student;

3 “(C) becomes 22 years of age if then such a stu-
4 dent and capable of self-support;

5 “(D) ceases to be such a student after becoming
6 18 years of age unless then incapable of self-support;
7 or

8 “(E) dies or marries;

9 whichever occurs first. On the death of the surviving wife or
10 husband, or former wife or husband, or termination of the
11 annuity of a child, the annuity of any other child or children
12 shall be recomputed and paid as though the wife or husband,
13 former wife or husband, or child had not survived the annui-
14 tant, employee, or Member.

15 **“§ 8444. Rights of a named individual with an insurable**
16 **interest**

17 “The annuity of a survivor named under section 8420(a)
18 of this title is 55 percent of the reduced annuity of the retired
19 employee or Member determined under paragraph (2) of such
20 section 8420(a). The annuity of the survivor commences on
21 the day after the retired employee or Member dies. This an-
22 nuity and the right thereto terminate on the last day of the
23 month before the survivor dies.

1 **"§ 8445. Rights of a former spouse**

2 “(a) Subject to subsections (b) through (e) of this section,
3 a former spouse of a deceased employee, Member, or annui-
4 tant (or of an employee or Member who dies after having
5 separated from the service with title to a deferred annuity
6 under section 8413 of this title but before having established
7 a valid claim for annuity) is entitled to an annuity under this
8 section, if and to the extent expressly provided for in an elec-
9 tion under section 8417(b) of this title, or in the terms of any
10 decree of divorce or annulment or any court order or court-
11 approved property settlement agreement incident to such
12 decree.

13 “(b)(1) The annuity payable to a former spouse under
14 this section may not exceed the difference between—

15 “(A) the amount applicable in the case of such
16 former spouse, as determined under paragraph (2) of
17 this subsection; and

18 “(B) the amount of any annuity payable under
19 this section to any other former spouse of the em-
20 ployee, Member, or annuitant, based on an election
21 previously made under section 8417(b) of this title, or
22 a court order previously issued or agreement previously
23 entered into as described in subsection (a) of this sec-
24 tion.

25 “(2) The applicable amount, for purposes of paragraph
26 (1)(A) of this subsection in the case of a former spouse, is the

1 amount which would be applicable under the provisions of
2 section 8442(d)(3)(A) of this title if such former spouse were
3 the widow or widower under such provisions.

4 “(c) The commencement and termination of an annuity
5 payable under this section shall be governed by the terms of
6 the applicable order, decree, agreement, or election, as the
7 case may be, except that any such annuity—

8 “(1) shall not commence before—

9 “(A) the day after the employee, Member, or
10 annuitant dies; or

11 “(B) the first day of the second month begin-
12 ning after the date on which the Office receives
13 written notice of the order, decree, agreement, or
14 election, as the case may be, together with such
15 additional information or documentation as the
16 Office may prescribe;

17 whichever is later; and

18 “(2) shall terminate no later than the last day of
19 the month before the former spouse remarries before
20 becoming 55 years of age or dies.

21 “(d) For purposes of this chapter, a modification in a
22 decree, order, agreement, or election referred to in subsection
23 (a) of this section shall not be effective—

1 “(1) if such modification is made after the retire-
2 ment or death of the employee or Member concerned;
3 and

4 “(2) to the extent that such modification involves
5 an annuity under this section.

6 “(e) For purposes of this chapter, a decree, order, agree-
7 ment, or election referred to in subsection (a) of this section
8 shall not be effective, in the case of a former spouse, to the
9 extent that it is inconsistent with any joint waiver previously
10 executed with respect to such former spouse under section
11 8416(a) of this title.

12 “(f) Any payment under this section to a person bars
13 recovery by any other person.

14 “SUBCHAPTER V—DISABILITY BENEFITS

15 “§ 8451. Disability retirement

16 “(a)(1)(A) An employee who completes at least 5 years
17 of civilian service creditable under section 8411 of this title
18 and has become disabled shall be retired on the employee's
19 own application or on application by the employee's agency.

20 “(B) For purposes of this subsection, an employee shall
21 be considered disabled only if the employee is found by the
22 Office to be unable, because of disease or injury, to render
23 useful and efficient service in the employee's position.

24 “(2)(A) Notwithstanding paragraph (1) of this subsec-
25 tion, an employee shall not be eligible for disability retire-

1 ment under this section if the employee has declined a rea-
2 sonable offer of reassignment to a vacant position in the em-
3 ployee's agency for which the employee is qualified if the
4 position—

5 “(i) is at the same grade (or pay level) as the em-
6 ployee's most recent grade (or pay level);

7 “(ii) is within the employee's commuting area; and

8 “(iii) is one in which the employee would be able
9 to render useful and efficient service.

10 “(B) An employee who is applying for disability retire-
11 ment under this subchapter shall be considered for reassign-
12 ment by the employee's agency to a vacant position described
13 in subparagraph (A) of this paragraph in accordance with
14 such procedures as the Office shall by regulation prescribe.

15 “(C) An employee is entitled to appeal to the Merit Sys-
16 tems Protection Board under section 7701 of this title any
17 determination that the employee is not unable, because of
18 disease or injury, to render useful and efficient service in a
19 position to which the employee has declined reassignment
20 under this section.

21 “(D) For purposes of subparagraph (A) of this para-
22 graph, an employee of the United States Postal Service shall
23 not be considered qualified for a position if such position is in
24 a different craft or if reassignment to such position would be

1 inconsistent with the terms of a collective-bargaining agree-
2 ment covering the employee.

3 “(b) A Member who completes 5 years of Member serv-
4 ice and is found by the Office to be disabled for useful and
5 efficient service as a Member because of disease or injury
6 shall be retired on the Member’s own application.

7 “(c) An employee or Member retiring under this section
8 is entitled to an annuity computed under section 8452 of this
9 title.

10 **“§ 8452. Computation of disability annuity**

11 “(a) The annuity of an employee or Member retiring
12 under section 8451 of this title shall be computed under sec-
13 tion 8415 of this title, except that such annuity shall be no
14 less than the smaller of—

15 “(1) 20 percent of that individual’s average pay;
16 or

17 “(2) the sum obtained under the applicable provi-
18 sions of section 8415 of this title after increasing that
19 individual’s service of the type last performed by the
20 period elapsing between the date of separation and the
21 date of becoming 60 years of age.

22 “(b)(1) An employee or Member retiring under section
23 8451 of this title shall be entitled to an annuity supplement
24 computed under paragraph (2) of this subsection with respect
25 to any period during which the employee or Member—

1 “(A) is entitled to an annuity computed under
2 subsection (a) of this section;

3 “(B) is not eligible for (or would not, on proper
4 application, be eligible for) disability insurance benefits
5 under title II of the Social Security Act based on such
6 disability; and

7 “(C) is under 62 years of age.

8 “(2) The annuity supplement for an employee or
9 Member shall, for any period, be equal to the lesser of—

10 “(A) the amount of the annuity payable to such
11 employee or Member, as computed under subsection (a)
12 of this section; or

13 “(B) the disability insurance benefits which would
14 be payable to such employee or Member for such
15 period under title II of the Social Security Act (deter-
16 mined as if such employee or Member were entitled to
17 such benefits), except that in computing any primary
18 insurance amount under section 215 of such Act for
19 purposes of determining an amount payable under this
20 subsection, subparagraphs (A) and (C) of section
21 8421(b)(2) of this title shall apply.

22 **“§ 8453. Application**

23 “A claim may be allowed under this subchapter only if
24 application is filed with the Office before the employee or
25 Member is separated from the service or within 1 year there-

1 after. This time limitation may be waived by the Office for an
2 employee or Member who, at the date of separation from
3 service or within 1 year thereafter, is mentally incompetent if
4 the application is filed with the Office within 1 year from the
5 date of restoration of the employee or Member to competency
6 or the appointment of a fiduciary, whichever is earlier.

7 **"§ 8454. Medical examination**

8 "An annuitant receiving a disability retirement annuity
9 from the Fund shall be examined under the direction of the
10 Office—

11 "(1) at the end of 1 year from the date of the dis-
12 ability retirement; and

13 "(2) annually thereafter until becoming 60 years
14 of age;

15 unless the disability is permanent in character. If the annui-
16 tant fails to submit to examination as required by this section,
17 payment of the annuity shall be suspended until continuance
18 of the disability is satisfactorily established.

19 **"§ 8455. Recovery; restoration of earning capacity**

20 "(a)(1) If an annuitant receiving a disability retirement
21 annuity from the Fund recovers from the disability before
22 becoming 60 years of age, payment of the annuity terminates
23 on reemployment by the Government or 1 year after the date
24 on which the Office determines that the annuitant has recov-
25 ered, whichever is earlier.

1 “(2) If an annuitant receiving a disability annuity from
2 the Fund, before becoming 60 years of age, is restored to an
3 earning capacity fairly comparable to the current rate of pay
4 of the position occupied at the time of retirement, payment of
5 the annuity terminates 180 days after the end of the calendar
6 year in which earning capacity is so restored. Earning capac-
7 ity is deemed restored if in any calendar year the income of
8 the annuitant from wages or self-employment or both equals
9 at least 80 percent of the current rate of pay of the position
10 occupied immediately before retirement.

11 “(b)(1) If an annuitant whose annuity is terminated
12 under subsection (a) of this section is not reemployed in a
13 position in which that individual is subject to this chapter,
14 such individual is deemed, except for service credit, to have
15 been involuntarily separated from the service for the purpose
16 of subchapter II of this chapter as of the date of termination
17 of the disability annuity, and after that termination is entitled
18 to annuity under the applicable provisions of such subchapter.

19 “(2) If an annuitant whose annuity is terminated under
20 subsection (a)(2) of this section—

21 “(A) is not reemployed in a position subject to
22 this chapter; and

23 “(B) has not recovered from the disability for
24 which that individual was retired;

1 the annuity of such individual shall be restored at the same
2 rate effective the first of the year following any calendar year
3 in which such individual's income from wages or self-employ-
4 ment or both is less than 80 percent of the current rate of
5 pay of the position occupied immediately before retirement.

6 “(3) If an annuitant whose annuity is terminated be-
7 cause of a medical finding that the individual has recovered
8 from disability is not reemployed in a position in which such
9 individual is subject to this chapter, the annuity of such indi-
10 vidual shall be restored at the same rate effective from the
11 date on which the Office determines that there has been a
12 recurrence of the disability.

13 “(4) Paragraphs (2) and (3) of this subsection shall not
14 apply in the case of an annuitant receiving an annuity from
15 the Fund under subchapter II of this chapter.

16 **“§ 8456. Relationship to workers' compensation**

17 “(a)(1) An individual is not entitled to receive an annu-
18 ity under this subchapter and compensation for injury to or
19 disability of the individual under subchapter I of chapter 81
20 of this title covering the same period of time.

21 “(2) Paragraph (1) of this subsection does not bar the
22 right of a claimant to the greater benefit conferred by either
23 subchapter referred to in such paragraph for any part of the
24 period referred to in such paragraph.

1 “(3) Paragraph (1) of this subsection and the provisions
2 of subchapter I of chapter 81 of this title do not deny an
3 individual an annuity which the individual is entitled to re-
4 ceive under this chapter on account of service performed by
5 the individual and do not deny any concurrent benefit to the
6 individual under subchapter I of chapter 81 of this title on
7 account of the death of another individual.

8 “(b)(1) Subject to paragraph (2) of this subsection, an
9 individual's receipt of a lump-sum payment for compensation
10 under section 8135 of this title shall not affect the individ-
11 ual's entitlement to an annuity under this subchapter.

12 “(2) If an annuity is payable under this subchapter by
13 reason of the same disability for which a lump-sum payment
14 of compensation referred to in paragraph (1) of this subsec-
15 tion has been made, so much of the compensation as has been
16 paid for a period extended beyond the date payment of the
17 annuity commences, as determined by the Department of
18 Labor, shall be refunded to that Department for credit to the
19 Employees' Compensation Fund. Before the individual may
20 receive the disability annuity, the individual shall—

21 “(A) refund to the Department of Labor the
22 amount representing the commuted compensation pay-
23 ments for the extended period; or

24 “(B) authorize the deduction of the amount from
25 the annuity.

1 Deductions from the annuity may be made from accrued or
2 accruing payments. The amounts deducted and withheld from
3 the annuity shall be transmitted to the Department of Labor
4 for reimbursement to the Employees' Compensation Fund.
5 When the Department of Labor finds that the financial cir-
6 cumstances of an individual entitled to an annuity under this
7 subchapter warrant deferred refunding under this paragraph,
8 deductions from the annuity may be prorated against and
9 paid from accruing payments in such manner as the Depart-
10 ment determines appropriate.

11 **"§ 8457. National Guard technicians**

12 “(a) As used in this section, the term ‘technician’ means
13 an individual employed under section 709(a) of title 32 who,
14 as a condition of the employment, is required under section
15 709(b) of such title to be a member of the National Guard
16 and to hold a specified military grade.

17 “(b)(1) Except as provided in paragraph (2) of this sub-
18 section, an individual shall be retired under this subchapter if
19 the individual—

20 “(A) is separated from employment as a techni-
21 cian under section 709(e)(1) of title 32 by reason of a
22 disability that disqualifies the individual from member-
23 ship in the National Guard or from holding the military
24 grade required for such employment;

1 “(B) is not considered to be disabled under section
2 8451(a)(1)(B) of this title;

3 “(C) is not appointed to a position in the Govern-
4 ment (whether under subsection (c) of this section or
5 otherwise); and

6 “(D) has not declined an offer of an appointment
7 to a position in the Government under subsection (c) of
8 this section.

9 “(2) Payment of any annuity for an individual pursuant
10 to this section terminates—

11 “(A) on the date the individual is appointed to a
12 position in the Government (whether pursuant to sub-
13 section (c) of this section or otherwise);

14 “(B) on the date the individual declines an offer of
15 appointment to a position in the Government under
16 subsection (c) of this section; or

17 “(C) as provided under section 8455(a) of this
18 title.

19 “(c) Any individual applying for or receiving any annu-
20 ity pursuant to this section shall, in accordance with regula-
21 tions prescribed by the Office, be considered by any agency of
22 the Government before any vacant position in the agency is
23 filled if—

24 “(1) the position is located within the commuting
25 area of the individual's former position;

1 “(2) the individual is qualified to serve in such po-
2 sition, as determined by the head of the agency; and

3 “(3) the position is at the same grade or equiva-
4 lent level as the position from which the individual was
5 separated under section 709(e)(1) of title 32.

6 **“SUBCHAPTER VI—GENERAL AND**
7 **ADMINISTRATIVE PROVISIONS**

8 **“§ 8461. Authority of the Office of Personnel Management**

9 “(a) The Office shall pay all benefits that are payable
10 under subchapter II, IV, V or VI, of this chapter from the
11 Fund.

12 “(b) The Office shall administer all provisions of this
13 chapter not specifically required to be administered by the
14 Board, the Executive Director, the Secretary or Labor, or
15 any other officer or agency.

16 “(c) The Office shall adjudicate all claims under the pro-
17 visions of this chapter administered by the Office.

18 “(d) The Office shall determine questions of disability
19 and dependency arising under the provisions of this chapter
20 administered by the Office. Except to the extent provided
21 under subsection (e) of this section, the decisions of the Office
22 concerning these matters are final and conclusive and are not
23 subject to review. The Office may direct at any time such
24 medical or other examinations as it considers necessary to
25 determine the facts concerning disability or dependency of an

1 individual receiving or applying for annuity under the provi-
2 sions of this chapter administered by the Office. The
3 Office may suspend or deny annuity for failure to submit to
4 examination.

5 “(e)(1) Subject to paragraph (2) of this subsection, the
6 administrative action or order affecting the rights or interests
7 of an individual or of the United States under the provisions
8 of this chapter administered by the Office may be appealed to
9 the Merit Systems Protection Board under procedures pre-
10 scribed by the Board.

11 “(2) In the case of any individual found by the Office to
12 be disabled in whole or in part on the basis of the individual’s
13 mental condition, and that finding was made pursuant to an
14 application by an agency for purposes of disability retirement
15 under section 8451 of this title, the procedures under section
16 7701 of this title shall apply and the decision of the Board
17 shall be subject to judicial review under section 7703 of this
18 title.

19 “(f) The Office shall fix the fees for examinations made
20 under subchapter V of this chapter by physicians or surgeons
21 who are not medical officers of the United States. The fees
22 and reasonable traveling and other expenses incurred in con-
23 nection with the examinations are paid from appropriations
24 for the cost of administering the provisions of this chapter
25 administered by the Office.

1 “(g) The Office may prescribe regulations to carry out
2 the provisions of this chapter administered by the Office.

3 **“§ 8462. Cost-of-living adjustments**

4 “(a) For the purpose of this section—

5 “(1) the term ‘base quarter’, as used with respect
6 to a year, means the calendar quarter ending on Sep-
7 tember 30 of such year; and

8 “(2) the price index for a base quarter is the ar-
9 ithmetical mean of such index for the 3 months com-
10 prising such quarter.

11 “(b) Except as provided in subsection (c) of this section,
12 effective December 1 of each year, each annuity which is
13 payable from the Fund under this chapter (other than an an-
14 nuity under section 8443 of this title) and which has a com-
15 mencing date not later than such December 1 shall be in-
16 creased by the percent change in the price index for the base
17 quarter of such year over the price index for the base quarter
18 of the preceding year in which an adjustment under this sub-
19 section was made, adjusted to the nearest $\frac{1}{10}$ of 1 percent.

20 “(c) Eligibility for an annuity increase under this section
21 is governed by the commencing date of each annuity payable
22 from the Fund as of the effective date of an increase, except
23 as follows:

24 “(1) The first increase (if any) made under subsec-
25 tion (b) of this section to an annuity which is payable

1 from the Fund to an annuitant or survivor whose annu-
2 ity has not been increased under this subsection or sub-
3 section (b) of this section, shall be equal to the product
4 (adjusted to the nearest $\frac{1}{10}$ of 1 percent) of—

5 “(A) $\frac{1}{12}$ of the applicable percent change
6 computed under subsection (b) of this section,
7 multiplied by

8 “(B) the number of months (not to exceed 12
9 months, counting any portion of a month as a
10 month)—

11 “(i) for which the annuity was payable
12 from the Fund before the effective date of
13 the increase; or

14 “(ii) in the case of a survivor of a de-
15 ceased annuitant whose annuity has not been
16 so increased, since the annuity was first pay-
17 able to the deceased annuitant.

18 “(2) Effective from its commencing date, an annu-
19 ity payable from the Fund to an annuitant's survivor
20 (except a child under section 8443 of this title) shall be
21 increased by the total percentage by which the de-
22 ceased annuitant's annuity had been increased under
23 this section during the period beginning on the date the
24 deceased annuitant's annuity commenced and ending
25 on the date of the deceased annuitant's death.

1 “(d) The monthly installment of an annuity after adjust-
2 ment under this section shall be rounded to the next lowest
3 dollar. However, the monthly installment shall, after adjust-
4 ment, reflect an increase of at least \$1.

5 **“§ 8463. Rate of benefits**

6 “Each annuity payable from the Fund is stated as an
7 annual amount, one-twelfth of which, rounded to the next
8 lowest dollar, constitutes the monthly rate payable on the
9 first business day of the first month beginning after the month
10 for which it has accrued.

11 **“§ 8464. Commencement and termination of annuities of**
12 **employees and Members**

13 “(a)(1) Except as otherwise provided in this chapter—

14 “(A) an annuity payable from the Fund com-
15 mences on the first day of the month after—

16 “(i) separation from the service, in the case
17 of an employee or Member retiring under section
18 8412, or subsection (a) or (b)(1)(B) of section
19 8414, of this title; or

20 “(ii) pay ceases, and the applicable service
21 and age requirements are met, in the case of an
22 employee or Member retiring under section 8413
23 of this title;

24 “(B) an annuity payable from the Fund com-
25 mences on the day after separation from the service in

1 the case of an employee retiring under section
2 8414(b)(1)(A) of this title; and

3 “(C) an annuity payable from the Fund com-
4 mences on the day after separation from the service or
5 the day after pay ceases and the requirements for title
6 to an annuity are met in the case of an employee or
7 Member retiring under section 8451 of this title.

8 “(b) Except as otherwise provided in this chapter, the
9 annuity of an annuitant under subchapter II or V of this
10 chapter terminates on the date death or other terminating
11 event occurs.

12 **“§ 8465. Waiver, allotment, and assignment of benefits**

13 “(a) An individual entitled to an annuity payable from
14 the Fund may decline to accept all or any part of the amount
15 of the annuity by a waiver signed and filed with the Office.
16 The waiver may be revoked in writing at any time. Payment
17 of the annuity waived may not be made for the period during
18 which the waiver is in effect.

19 “(b) An individual entitled to an annuity payable from
20 the Fund may make allotments or assignments of amounts
21 from the annuity for such purposes as the Office considers
22 appropriate.

23 **“§ 8466. Application for benefits**

24 “(a) No payment of benefits based on the service of an
25 employee or Member shall be made from the Fund unless an

1 application for payment of the benefits is received by the
2 Office before the one hundred and fifteenth anniversary of the
3 employee or Member's birth.

4 “(b) Notwithstanding subsection (a) of this section, after
5 the death of an employee, Member, or annuitant, a benefit
6 based on the service of such employee, Member, or annuitant
7 shall not be paid under subchapter II or IV of this chapter
8 unless an application therefor is received by the Office within
9 30 years after the death or other event which establishes the
10 entitlement to the benefit.

11 “(c) Payment due a minor, or an individual mentally
12 incompetent or under other legal disability, may be made to
13 the person who is constituted guardian or other fiduciary by
14 the law of the State or residence of the claimant or is other-
15 wise legally vested with the care of the claimant or his
16 estate. If a guardian or other fiduciary of the individual under
17 legal disability has not been appointed under the law of the
18 State of residence of the claimant, payment may be made to
19 any person who, in the judgment of the Office, is responsible
20 for the care of the claimant, and the payment bars recovery
21 by any other person.

22 **“§ 8467. Court orders**

23 “(a) Payments under this chapter which would other-
24 wise be made to an employee, Member, or annuitant (includ-
25 ing an employee, Member, or annuitant as defined under sec-

tion 8331 of this title) based on the service of that individual shall be paid (in whole or in part) by the Office or the Executive Director (as the case may be), to another person if and to the extent that the terms of any court decree of divorce, annulment, or legal separation, or the terms of any court order or court-approved property settlement agreement incident to any court decree of divorce, annulment, or legal separation expressly provide. Any payment under this paragraph to a person bars recovery by any other person.

“(b) Subsection (a) of this section shall apply only to payments made by the Office or the Executive Director under this chapter after the date on which the Office or the Executive Director (as the case may be) receives written notice of such decree, order, or agreement, and such additional information and documentation as the Office or the Executive Director may require.

“§ 8468. Annuities and pay on reemployment

“(a) If an annuitant becomes employed in an appointive or elective position in the Government, payment of any annuity under subchapter II or V of this chapter to the annuitant terminates effective on the date of the employment. The annuitant's service on and after the date the annuitant becomes so employed is covered by this chapter unless such service is performed as a justice or judge of the United States (as defined by section 451 of title 28) or as an employee subject to

1 another retirement system for Government employees. Upon
2 termination of the employment, the rights of the annuitant
3 under subchapter II or V of this chapter (as the case may be)
4 shall be redetermined. If the annuitant dies while still so em-
5 ployed, a survivor annuity payable with respect to the de-
6 ceased annuitant shall be redetermined as if the employment
7 had otherwise terminated on the date of death.

8 “(b) The amount of an annuity resulting from a redeter-
9 mination of rights under this chapter pursuant to subsection
10 (a) of this section shall not be less than the amount of the
11 terminated annuity plus any increases under section 8462 of
12 this title occurring after the termination of the annuity and
13 before the commencement of the redetermined annuity.

14 **“§ 8469. Withholding of State income taxes**

15 “(a) The Office shall, in accordance with this section,
16 enter into an agreement with any State within 120 days of a
17 request for agreement from the proper State official. The
18 agreement shall provide that the Office shall withhold State
19 income tax in the case of the monthly annuity of any annui-
20 tant who voluntarily requests, in writing, such withholding.
21 The amounts withheld during any calendar quarter shall be
22 held in the Fund and disbursed to the States during the
23 month following that calendar quarter.

24 “(b) An annuitant may have in effect at any time only
25 one request for withholding under this section, and an annui-

1 tant may not have more than two such requests in effect
2 during any one calendar year.

3 “(c) Subject to subsection (b) of this section, an annui-
4 tant may change the State designated by that annuitant for
5 purposes of having withholdings made, and may request that
6 the withholdings be remitted in accordance with such change.
7 An annuitant also may revoke any request of that annuitant
8 for withholding. Any change in the State designated or revo-
9 cation is effective on the first day of the month after the
10 month in which the request or the revocation is processed by
11 the Office, but in no event later than on the first day of the
12 second month beginning after the day on which such request
13 or revocation is received by the Office.

14 “(d) This section does not give the consent of the United
15 States to the application of a statute which imposes more
16 burdensome requirements on the United States than on em-
17 ployers generally, or which subjects the United States or any
18 annuitant to a penalty or liability because of this section. The
19 Office may not accept pay from a State for services per-
20 formed in withholding State income taxes from annuities.
21 Any amount erroneously withheld from an annuity and paid
22 to a State by the Office shall be repaid by the State in ac-
23 cordance with regulations issued by the Office.

24 “(e) For the purpose of this section—

1 “(1) the term ‘State’ means a State, the District
2 of Columbia, or any territory or possession of the
3 United States; and

4 “(2) the term ‘annuitant’ includes a survivor who
5 is receiving an annuity from the Fund.

6 **“§ 8470. Exemption from legal process; recovery of pay-**
7 **ments**

8 “(a) An amount payable under subchapter II, IV, or V
9 of this chapter is not assignable, either in law or equity,
10 except under the provisions of section 8465 or 8467 of this
11 title, or subject to execution, levy, attachment, garnishment
12 or other legal process, except as otherwise may be provided
13 by Federal laws.

14 “(b) Recovery of payments under subchapter II, IV, or
15 V of this chapter may not be made from an individual when,
16 in the judgment of the Office, the individual is without fault
17 and recovery would be against equity and good conscience.
18 Withholding or recovery of money paid under subchapter II,
19 IV, or V of this chapter on account of a certification or pay-
20 ment made by a former employee of the United States in the
21 discharge of his official duties may be made only if the head
22 of the agency on behalf of which the certification or payment
23 was made certifies to the Office that the certification or pay-
24 ment involved fraud on the part of the former employee.

1 “SUBCHAPTER VII—FEDERAL RETIREMENT
2 THRIFT INVESTMENT MANAGEMENT SYSTEM

3 “§ 8471. Definitions

4 “For the purpose of this subchapter—

5 “(1) the term ‘participant’ means an individual for
6 whom an account has been established under section
7 8435 of this title;

8 “(2) the term ‘beneficiary’ means an individual
9 (other than a participant) entitled to payment from the
10 Thrift Savings Fund under subchapter III of this
11 chapter;

12 “(3) the term ‘Board’ means the Federal Retirement Thrift Investment Board established under section 8472 of this title;

15 “(4) the term ‘Council’ means the Employee Thrift Advisory Council established under section 8473 of this title;

18 “(5) the term ‘Thrift Savings Fund’ means the Thrift Savings Fund established under section 8434 of this title;

21 “(6) the term ‘person’ means an individual, partnership, joint venture, corporation, mutual company, joint-stock company, trust, estate, unincorporated organization, association, or labor organization; and

1 “(7) the term ‘court’ means any court of the
2 United States.

3 **“§ 8472. Federal Retirement Thrift Investment Board**

4 “(a) There is established in the executive branch of the
5 Government a Federal Retirement Thrift Investment Board.

6 “(b) The Board shall be composed of—

7 “(1) 2 members appointed by the President, of
8 whom 1 shall be designated by the President as Chair-
9 man;

10 “(2) 2 members appointed by the President, of
11 whom—

12 “(A) 1 shall be appointed upon the recom-
13 mendation of the Speaker of the House of Repre-
14 sentatives in consultation with the minority leader
15 of the House of Representatives; and

16 “(B) 1 shall be appointed upon the recom-
17 mendation of the majority leader of the Senate in
18 consultation with the minority leader of the
19 Senate;

20 “(3) 1 member appointed by the President upon
21 the recommendation of the members appointed under
22 paragraphs (1) and (2) of this subsection.

23 “(c) Members of the Board shall have substantial experi-
24 ence, training, and expertise in the management of financial
25 investments.

1 “(d)(1) A member of the Board shall be appointed for a
2 term of 4 years, except that of the members first appointed—

3 “(A) the Chairman shall be appointed for a term
4 of 4 years;

5 “(B) the members appointed under paragraphs
6 (2)(A) and (2)(B) of subsection (b) shall be appointed for
7 terms of 3 years; and

8 “(C) the remaining members shall be appointed
9 for terms of 2 years.

10 “(2)(A) A vacancy on the Board shall be filled in the
11 manner in which the original appointment was made and
12 shall be subject to any conditions which applied with respect
13 to the original appointment.

14 “(B) An individual chosen to fill a vacancy shall be ap-
15 pointed for the unexpired term of the member replaced.

16 “(3) The term of any member shall not expire before the
17 date on which the member's successor takes office.

18 “(e) The Board shall—

19 “(1) prescribe such regulations (other than regula-
20 tions relating to fiduciary responsibilities) as may be
21 necessary for the administration of this subchapter and
22 subchapter III of this chapter;

23 “(2) establish policies for—

24 “(A) the investment and management of the
25 Thrift Savings Fund; and

1 “(B) the administration of subchapter III of
2 this chapter;

3 “(3) review the performance of investments made
4 for the Thrift Savings Fund; and

5 “(4) review and approve the budget of the Board.

6 “(f)(1) The Board may—

7 “(A) adopt, alter, and use a seal;

8 “(B) except as provided in paragraph (2) of this
9 subsection, direct the Executive Director to take such
10 action as the Board considers appropriate to carry out
11 the provisions of this subchapter and subchapter III of
12 this chapter and the policies of the Board;

13 “(C) upon the concurring votes of four members,
14 remove the Executive Director from office for good
15 cause shown; and

16 “(D) take such other action as may be necessary
17 to carry out the functions of the Board.

18 “(2) Except in the case of investments required by sec-
19 tion 8436(d) of this title to be invested in securities of the
20 Government, the Board may not direct the Executive Direc-
21 tor or any contractor under a contract awarded under section
22 8474(c)(4) of this title to invest or to cause to be invested any
23 sums in the Thrift Savings Fund in a specific asset or to
24 dispose of or cause to be disposed of any specific asset of such
25 Fund.

1 “(g) The members of the Board shall discharge their
2 responsibilities solely in the interest of participants and bene-
3 ficiaries under this subchapter and subchapter III of this
4 chapter.

5 **“§ 8473. Employee Thrift Advisory Council**

6 “(a) The Board shall establish an Employee Thrift Ad-
7 visory Council. The Council shall be composed of 15 mem-
8 bers appointed by the Chairman in accordance with subsec-
9 tion (b) of this section.

10 “(b) The Chairman shall appoint 15 members of the
11 Council, of whom—

12 “(1) 4 shall be appointed to represent the respec-
13 tive labor organizations representing (as exclusive rep-
14 resentatives) the first, second, third, and fourth largest
15 numbers of individuals subject to chapter 71 of this
16 title;

17 “(2) 2 shall be appointed to represent the respec-
18 tive labor organizations which have been accorded ex-
19 clusive recognition under section 1203(a) of title 39
20 representing the largest and second largest numbers of
21 individuals employed by the United States Postal Serv-
22 ice;

23 “(3) 1 shall be appointed to represent the labor
24 organization which has been accorded exclusive recog-
25 nition under section 1203(a) of title 39 representing the

1 largest number of individuals employed by the United
2 States Postal Service as rural letter carriers;

3 “(4) 2 shall be appointed to represent the respec-
4 tive managerial organizations (other than an organiza-
5 tion described in paragraph (5) of this subsection)
6 which consult with the United States Postal Service
7 under section 1004(b) of title 39 and which represent
8 the largest and second largest numbers of individuals
9 employed by the United States Postal Service as man-
10 agerial personnel;

11 “(5) 1 shall be appointed to represent the supervi-
12 sors’ organization as defined in section 1004(h) of title
13 39;

14 “(6) 1 shall be appointed to represent employee
15 organizations having as a purpose promoting the inter-
16 ests of women in Government service;

17 “(7) 1 shall be appointed to represent the organi-
18 zation representing the largest number of individuals
19 receiving annuities under this chapter or chapter 83 of
20 this title;

21 “(8) 1 shall be appointed to represent the organi-
22 zation representing the largest number of individuals
23 subject to the Performance Management and Recogni-
24 tion System under chapter 54 of this title; and

1 “(9) 1 shall be appointed to represent the organi-
2 zation representing the largest number of members of
3 the Senior Executive Service.

4 “(c)(1) The Chairman of the Board shall designate 1
5 member of the Council to serve as head of the Council.

6 “(2) A member of the Council shall be appointed for a
7 term of 4 years.

8 “(3)(A) A vacancy in the Council shall be filled in the
9 manner in which the original appointment was made and
10 shall be subject to any conditions which applied with respect
11 to the original appointment.

12 “(B) An individual chosen to fill a vacancy shall be ap-
13 pointed for the unexpired term of the member replaced.

14 “(C) The term of any member shall not expire before
15 the date on which the member's successor takes office.

16 “(d) The Council shall act by resolution of a majority of
17 the members.

18 “(e) The Council shall—

19 “(1) advise the Board and the Executive Director
20 on matters relating to—

21 “(A) investment policies for the Thrift Sav-
22 ings Fund;

23 “(B) selection of the types of investment
24 funds that are appropriate for investment of sums
25 in the Thrift Savings Fund; and

1 “(C) the administration of this chapter and
2 subchapter III of this chapter; and

3 “(2) perform such other duties as the Board may
4 direct with respect to investment funds established in
5 accordance with subchapter III of this chapter.

6 **“§ 8474. Executive Director**

7 “(a)(1) The Board shall appoint, without regard to the
8 provisions of law governing appointments in the competitive
9 service, an Executive Director by action agreed to by a ma-
10 jority of the members of the Board.

11 “(2) The Executive Director shall have substantial ex-
12 perience, training, and expertise in the management of finan-
13 cial investments.

14 “(b) The Executive Director shall—

15 “(1) carry out the policies established by the
16 Board;

17 “(2) invest and manage the Thrift Savings Fund
18 in accordance with the investment and other policies
19 established by the Board;

20 “(3) provide for payment of annuities and other
21 authorized distributions from the Thrift Savings Fund
22 under this chapter;

23 “(4) administer the provisions of this subchapter
24 and subchapter III of this chapter; and

1 “(5) meet from time to time with the Council
2 upon request of the Council.

3 “(c) The Executive Director may—

4 “(1) prescribe such regulations as may be neces-
5 sary to carry out the responsibilities of the Executive
6 Director under this section, other than regulations re-
7 lating to fiduciary responsibilities;

8 “(2) appoint such personnel as may be necessary
9 to carry out the provisions of this subchapter and sub-
10 chapter III of this chapter;

11 “(3) subject to approval by the Board, procure the
12 services of experts and consultants under section 3109
13 of this title;

14 “(4) subject to approval by the Board, enter into
15 such contracts or other arrangements, as may be ap-
16 propriate, and make such modifications thereof, as may
17 be appropriate to carry out the provisions of this sub-
18 chapter and subchapter III of this chapter and the
19 policies of the Board;

20 “(5) secure directly from an Executive agency,
21 the United States Postal Service, or the Postal Rate
22 Commission any information necessary to carry out the
23 provisions of this subchapter or subchapter III of this
24 chapter and policies of the Board;

1 “(6) make such payments out of sums in the
2 Thrift Savings Fund as the Executive Director deter-
3 mines are necessary to carry out the provisions of this
4 subchapter and subchapter III of this chapter and the
5 policies of the Board;

6 “(7) pay the compensation, per diem, and travel
7 expenses of individuals appointed under paragraphs (2),
8 (3), and (8) of this subsection from the Thrift Savings
9 Fund;

10 “(8) accept and use the services of individuals em-
11 ployed intermittently in the Government service and
12 reimburse such individuals for travel expenses, as au-
13 thorized by section 5703 of this title, including per
14 diem as authorized by section 5702 of this title;

15 “(9) except as otherwise expressly prohibited by
16 law or the policies of the Board, delegate any of the
17 Executive Director's functions to such employees under
18 the Board as the Executive Director may designate
19 and authorize such successive redelegations of such
20 functions to such employees under the Board as the
21 Executive Director may consider to be necessary or
22 appropriate; and

23 “(10) take such other actions as are appropriate
24 to carry out the functions of the Executive Director.

1 **“§ 8475. Investment policies**

2 “The Board shall develop investment policies under sec-
3 tion 8472(e)(2) of this title which provide for—

4 “(1) prudent investments suitable for accumulating
5 funds for payment of retirement income;

6 “(2) low administrative costs; and

7 “(3) taking into consideration the views of the
8 Employee Thrift Advisory Committee.

9 **“§ 8476. Administrative provisions**

10 “(a) The Board shall meet—

11 “(1) not less than once during each month; and

12 “(2) at additional times at the call of the Chair-
13 man.

14 “(b)(1) Except as provided in section 8471(f)(1)(C) and
15 8474(a)(1) of this title, the Board shall perform the functions
16 and exercise the powers of the Board on a majority vote of a
17 quorum of the Board.

18 “(2) A vacancy on the Board shall not impair the au-
19 thority of a quorum of the Board to perform the functions and
20 exercise the powers of the Board.

21 “(c) Three members of the Board shall constitute a
22 quorum for the transaction of business.

23 “(d)(1) Each member of the Board who is not an officer
24 or employee of the Federal Government shall be compensat-
25 ed at the daily rate of basic pay for grade GS-18 of the Gen-

1 eral Schedule for each day or part thereof during which such
2 member is engaged in performing a function of the Board.

3 “(2) A member of the Board or the Council shall be paid
4 travel, per diem, and other necessary expenses under sub-
5 chapter I of chapter 57 of this title while traveling away from
6 such member's home or regular place of business in the per-
7 formance of the duties of the Board or the Council, as the
8 case may be.

9 “(3) Payments authorized under this subsection shall be
10 paid from the Thrift Savings Fund.

11 “(e) The accrued annual leave of any employee who is a
12 member of the Board or the Council shall not be charged for
13 any time used in performing service for the Board or the
14 Council.

15 “(f) Section 14(a)(2) of the Federal Advisory Committee
16 Act shall not apply to the Employee Thrift Advisory Council.

17 **“§ 8477. Fiduciary responsibilities; liability and penalties**

18 “(a) For the purpose of this section—

19 “(1) the term ‘fiduciary’ means—

20 “(A) the Executive Director;

21 “(B) any person who has or exercises discre-
22 tionary authority or discretionary control over the
23 management or disposition of the assets of the
24 Thrift Savings Fund;

1 “(C) each member of the Council with re-
2 spect to the member’s duties in connection with
3 the Indexed Equity Fund, Indexed Bond Fund,
4 Diversified Equity Investment Account, and Di-
5 versified Bond Investment Account described in
6 section 8436(a) of this title; and

7 “(D) any person who, with respect to the
8 Thrift Savings Fund, is described in section
9 3(21)(A) of the Employee Retirement Income Se-
10 curity Act of 1974;

11 except that, such term does not include the members of
12 the Board;

13 “(2) the term ‘party in interest’ includes—

14 “(A) any fiduciary;

15 “(B) any counsel to a person who is a fiduci-
16 ary, with respect to the actions of such person as
17 a fiduciary;

18 “(C) any participant;

19 “(D) any person providing services to the
20 Board and any person providing services to the
21 Executive Director, with respect to the actions of
22 the Executive Director as a fiduciary;

23 “(E) a labor organization, the members of
24 which are participants;

1 “(F) a spouse, sibling, ancestor, lineal de-
2 scendant, or spouse of a lineal descendant of a
3 person described in subparagraph (A), (B), or (D)
4 of this paragraph;

5 “(G) a corporation, partnership, or trust or
6 estate of which, or in which, at least 50 percent
7 of—

8 “(i) the combined voting power of all
9 classes of stock entitled to vote or the total
10 value of shares of all classes of stock of such
11 corporation;

12 “(ii) the capital interest or profits inter-
13 est of such partnership; or

14 “(iii) the beneficial interest of such trust
15 or estate,
16 is owned directly or indirectly, or held by a
17 person described in subparagraph (A), (B), (D), or
18 (E) of this paragraph;

19 “(H) an officer or employee of (or an individ-
20 ual having powers or responsibilities of an officer
21 or employee of) a person described in subpara-
22 graph (A), (B), (D), (E), or (G) of this paragraph;

23 “(I) a holder (direct or indirect) of 10 percent
24 of the shares in a person described in any sub-
25 paragraph referred to in subparagraph (H); and

1 “(J) a person who, directly or indirectly, is
2 at least a 10 percent partner or joint venturer
3 (measured in capital or profits) in a person de-
4 scribed in any subparagraph referred to in sub-
5 paragraph (H); and

6 “(3) the term ‘adequate consideration’ means—

7 “(A) in the case of a security for which there
8 is a generally recognized market—

9 “(i) the price of the security prevailing
10 on a national securities exchange which is
11 registered under section 6 of the Securities
12 Exchange Act of 1934; or

13 “(ii) if the security is not traded on such
14 a national securities exchange, a price not
15 less favorable to the Thrift Savings Fund
16 than the offering price for the security as es-
17 tablished by the current bid and asked prices
18 quoted by persons independent of the issuer
19 and of any party in interest; and

20 “(B) in the case of an asset other than a se-
21 curity for which there is a generally recognized
22 market, the fair market value of the asset as de-
23 termined in good faith by a fiduciary or fiduciaries
24 in accordance with regulations prescribed by the
25 Secretary of Labor.

1 “(b)(1) To the extent not inconsistent with the provi-
2 sions of this chapter and the policies prescribed by the Board,
3 a fiduciary shall discharge his responsibilities with respect to
4 the Thrift Savings Fund or applicable portion thereof solely
5 in the interest of the participants and beneficiaries and—

6 “(A) for the exclusive purpose of—

7 “(i) providing benefits to participants and
8 their beneficiaries; and

9 “(ii) defraying reasonable expenses of admin-
10 istering the Thrift Savings Fund or applicable
11 portions thereof;

12 “(B) with the care, skill, prudence, and diligence
13 under the circumstances then prevailing that a prudent
14 individual acting in a like capacity and familiar with
15 such matters would use in the conduct of an enterprise
16 of a like character and with like objectives; and

17 “(C) to the extent permitted by section 8436 of
18 this title, by diversifying the investments of the Thrift
19 Savings Fund or applicable portions thereof so as to
20 minimize the risk of large losses, unless under the cir-
21 cumstances it is clearly prudent not to do so.

22 “(2) No fiduciary may maintain the indicia of ownership
23 of any assets of the Thrift Savings Fund outside the jurisdic-
24 tion of the district courts of the United States.

1 “(c)(1) A fiduciary shall not permit the Thrift Savings
2 Fund to engage in any of the following transactions, except
3 in exchange for adequate consideration:

4 “(A) A transfer of any assets of the Thrift Sav-
5 ings Fund to any person the fiduciary knows or should
6 know to be a party in interest or the use of such assets
7 by any such person.

8 “(B) An acquisition of any property from or sale
9 of any property to the Thrift Savings Fund by any
10 person the fiduciary knows or should know to be a
11 party in interest.

12 “(C) A transfer or exchange of services between
13 the Thrift Savings Fund and any person the fiduciary
14 knows or should know to be a party in interest.

15 “(2) Notwithstanding paragraph (1) of this subsection, a
16 fiduciary with respect to the Thrift Savings Fund shall not—

17 “(A) deal with any assets of the Thrift Savings
18 Fund in his own interest or for his own account;

19 “(B) act, in an individual capacity or any other
20 capacity, in any transaction involving the Thrift Sav-
21 ings Fund on behalf of a party, or representing a party,
22 whose interests are adverse to the interests of the
23 Thrift Savings Fund or the interests of its participants
24 or beneficiaries;

1 “(C) receive any consideration for his own person-
2 al account from any party dealing with sums credited
3 to the Thrift Savings Fund in connection with a trans-
4 action involving assets of the Thrift Savings Fund.

5 “(d) This section does not prohibit any fiduciary from—

6 “(1) receiving any benefit which the fiduciary is
7 entitled to receive under this subchapter or subchapter
8 III of this chapter as a participant or beneficiary;

9 “(2) receiving any reasonable compensation au-
10 thorized by this subchapter for services rendered, or for
11 reimbursement of expenses properly and actually in-
12 curred, in the performance of the fiduciary's duties
13 under this chapter; or

14 “(3) serving as a fiduciary in addition to being an
15 officer, employee, agent, or other representative of a
16 party in interest.

17 “(e)(1)(A) Any fiduciary that breaches the responsibil-
18 ities, duties, and obligations set out in subsection (b) of this
19 section or violates subsection (c) of this section shall be per-
20 sonally liable to the Thrift Savings Fund for any losses to
21 such Fund resulting from each such breach or violation and
22 to restore to such Fund any profits made by the fiduciary
23 through use of assets of such Fund by the fiduciary, and shall
24 be subject to such other equitable or remedial relief as a court

1 considers appropriate. A fiduciary may be removed for a
2 breach referred to in the preceding sentence.

3 “(B) The Secretary of Labor may assess a civil penalty
4 against a party in interest with respect to each transaction
5 which is engaged in by the party in interest and is prohibited
6 by subsection (c) of this section. The amount of such penalty
7 shall be equal to 5 percent of the amount involved in each
8 such transaction (as defined in section 4975(f)(4) of the Inter-
9 nal Revenue Code of 1954) for each year or part thereof
10 during which the prohibited transaction continues, except
11 that, if the transaction is not corrected (in such manner as the
12 Secretary of Labor shall prescribe by regulation consistent
13 with section 4975(f)(5) of the Internal Revenue Code of
14 1954) within 90 days after the date the Secretary of Labor
15 transmits notice to the party in interest (or such longer period
16 as the Secretary of Labor may permit), such penalty may be
17 in an amount not more than 100 percent of the amount in-
18 volved.

19 “(C) A fiduciary shall not be liable under subparagraph
20 (A) of this paragraph with respect to a breach of fiduciary
21 duty under subsection (b) of this section committed before
22 becoming a fiduciary or after ceasing to be a fiduciary.

23 “(D) A fiduciary shall be jointly and severally liable
24 under subparagraph (A) of this paragraph for a breach of fi-

1 duciary duty under subsection (b) of this section by another
2 fiduciary if—

3 “(i) the fiduciary participates knowingly in, or
4 knowingly undertakes to conceal, an act or omission of
5 such other fiduciary, knowing such act or omission is
6 such a breach;

7 “(ii) by the fiduciary’s failure to comply with sub-
8 section (b) of this section in the administration of the
9 fiduciary’s specific responsibilities which give rise to
10 the fiduciary status, the fiduciary has enabled such
11 other fiduciary to commit such a breach; or

12 “(iii) the fiduciary has knowledge of a breach by
13 such other fiduciary, unless the fiduciary makes reason-
14 able efforts under the circumstances to remedy the
15 breach.

16 “(E) The Secretary of Labor shall prescribe, in regula-
17 tions, procedures for allocating fiduciary responsibilities
18 among fiduciaries, including investment managers. Any fidu-
19 ciary who, pursuant to such procedures, allocates to a person
20 or persons any fiduciary responsibility shall not be liable for
21 an act or omission of such person or persons unless—

22 “(i) such fiduciary violated subsection (b) of this
23 section with respect to the allocation, with respect to
24 the implementation of the procedures prescribed by the
25 Board, or in continuing such allocation; or

1 “(ii) such fiduciary would otherwise be liable in
2 accordance with subparagraph (D) of this paragraph.

3 “(2) A civil action may be brought in the district courts
4 of the United States—

5 “(A) by the Secretary of Labor—

6 “(i) to determine and enforce a liability under
7 paragraph (1)(A) of this subsection;

8 “(ii) to collect any civil penalty under para-
9 graph (1)(B) of this subsection; or

10 “(iii) to enjoin any act or practice which vio-
11 lates subsection (f)(2) or (g) of section 8472 of this
12 title;

13 “(B) by the Secretary of Labor, any participant,
14 beneficiary, or fiduciary—

15 “(i) to enjoin any act or practice which vio-
16 lates any provision of subsection (b) or (c) of this
17 section; or

18 “(ii) to obtain any other appropriate equitable
19 relief to redress a violation of any such provision;

20 “(C) by any participant or beneficiary to recover
21 benefits due to him or her under the provisions of this
22 chapter, to enforce his or her rights under such provi-
23 sions, or to clarify his or her rights to future benefits
24 under such provisions.

1 “(3) An action may not be commenced under paragraph
2 (2) of this subsection with respect to a fiduciary’s breach of
3 any responsibility, duty, or obligation under subsection (b) of
4 this section or a violation of subsection (c) of this section after
5 the earlier of—

6 “(A) 6 years after (i) the date of the last action
7 which constituted a part of the breach or violation, or
8 (ii) in the case of an omission, the latest date on which
9 the fiduciary could have cured the breach or violation;
10 or

11 “(B) 3 years after the earliest date on which the
12 plaintiff had actual knowledge of the breach or viola-
13 tion, except that, in the case of fraud or concealment,
14 such action may be commenced not later than 6 years
15 after the date of discovery of such breach or violation.

16 “(4)(A) The district courts of the United States shall
17 have exclusive jurisdiction of civil actions under this subsec-
18 tion.

19 “(B) An action under this subsection may be brought in
20 the District Court of the United States for the District of
21 Columbia or a district court of the United States in the dis-
22 trict where the breach alleged in the complaint or petition
23 filed in the action took place or in the district where a de-
24 fendant resides or may be found. Process may be served in
25 any other district where a defendant resides or may be found.

1 “(5)(A) A copy of the complaint or petition filed in any
2 action brought under this subsection (other than by the Sec-
3 retary of Labor) shall be served on the Executive Director,
4 the Secretary of Labor, and the Secretary of the Treasury by
5 certified mail.

6 “(B) Any officer referred to in subparagraph (A) of this
7 paragraph shall have the right in his discretion to intervene
8 in any action. If the Secretary of Labor brings an action
9 under paragraph (2) of this subsection on behalf of a partici-
10 pant or beneficiary, he shall notify the Executive Director
11 and the Secretary of the Treasury.

12 “(f) The Secretary of Labor may prescribe regulations to
13 carry out this section.

14 “(g) The Secretary of Labor, in consultation with the
15 Comptroller General of the United States, shall establish a
16 program to carry out regular audits to determine the level of
17 compliance with the requirements of this section relating to
18 fiduciary responsibilities and prohibited activities of fiducia-
19 ries.

20 **“§ 8478. Bonding**

21 “(a)(1) Except as provided in paragraph (2) of this sub-
22 section, each fiduciary and each person who handles funds or
23 property of the Thrift Savings Fund shall be bonded as pro-
24 vided in this section.

1 “(2)(A) Bond shall not be required of a fiduciary (or of
2 any officer or employee of such fiduciary) if such fiduciary—

3 “(i) is a corporation organized and doing business
4 under the laws of the United States or of any State;

5 “(ii) is authorized under such laws to exercise
6 trust powers or to conduct an insurance business;

7 “(iii) is subject to supervision or examination by
8 Federal or State authority; and

9 “(iv) has at all times a combined capital and sur-
10 plus in excess of such minimum amount (not less than
11 \$1,000,000) as the Secretary of Labor prescribes in
12 regulations.

13 “(B) If—

14 “(i) a bank or other financial institution would,
15 but for this subparagraph, not be required to be bonded
16 under this section by reason of the application of the
17 exception provided in subparagraph (A) of this
18 paragraph,

19 “(ii) the bank or financial institution is authorized
20 to exercise trust powers, and

21 “(iii) the deposits of the bank or financial institu-
22 tion are not insured by the Federal Deposit Insurance
23 Corporation or the Federal Savings and Loan Insur-
24 ance Corporation,

1 such exception shall apply to such bank or financial institu-
2 tion only if the bank or institution meets bonding require-
3 ments under State law which the Secretary of Labor deter-
4 mines are at least equivalent to those imposed on banks by
5 Federal law.

6 “(b)(1) The Secretary of Labor shall prescribe the
7 amount of a bond under this section at the beginning of each
8 fiscal year. Except as otherwise provided in this paragraph,
9 such amount shall not be less than 10 percent of the amount
10 of funds handled. In no case shall such bond be less than
11 \$1,000 nor more than \$500,000, except that the Secretary of
12 Labor, after due notice and opportunity for hearing to all
13 interested parties, and other consideration of the record, may
14 prescribe an amount in excess of \$500,000.

15 “(2) For the purpose of prescribing the amount of a
16 bond under paragraph (1) of this subsection, the amount of
17 funds handled shall be determined by reference to the amount
18 of the funds handled by the person, group, or class to be
19 covered by such bond or by their predecessor or predecessors,
20 if any, during the preceding fiscal year, or to the amount of
21 funds to be handled during the current fiscal year by such
22 person, group, or class, estimated as provided in regulations
23 prescribed by the Secretary of Labor.

24 “(c) A bond required by subsection (a) of this section—

1 “(1) shall include such terms and conditions as the
2 Secretary of Labor considers necessary to protect the
3 Thrift Savings Fund against loss by reason of acts of
4 fraud or dishonesty on the part of the bonded person
5 directly or through connivance with others;

6 “(2) shall have as surety thereon a corporate
7 surety company which is an acceptable surety on Fed-
8 eral bonds under authority granted by the Secretary of
9 the Treasury pursuant to sections 6 through 13 of title
10 6; and

11 “(3) shall be in a form or of a type approved by
12 the Secretary of Labor, including individual bonds or
13 schedule or blanket forms of bonds which cover a
14 group or class.

15 “(d)(1) It shall be unlawful for any person to whom sub-
16 section (a) of this section applies, to receive, handle, disburse,
17 or otherwise exercise custody or control of any of the funds
18 or other property of the Thrift Savings Fund without being
19 bonded as required by this section.

20 “(2) It shall be unlawful for any fiduciary, or any other
21 person having authority to direct the performance of func-
22 tions described in paragraph (1) of this subsection, to permit
23 any such function to be performed by any person to whom
24 subsection (a) of this section applies unless such person has
25 met the requirements of such subsection.

1 “(e) Notwithstanding any other provision of law, any
2 person who is required to be bonded as provided in subsection
3 (a) of this section shall be exempt from any other provision of
4 law which would, but for this subsection, require such person
5 to be bonded for the handling of the funds or other property
6 of the Thrift Savings Fund.

7 “(f) The Secretary of Labor shall prescribe such regula-
8 tions as may be necessary to carry out the provisions of this
9 section, including exempting a person or class of persons
10 from the requirements of this section.

11 **“§ 8479. Exculpatory provisions; insurance**

12 “(a) Any provision in an agreement or instrument which
13 purports to relieve a fiduciary from responsibility or liability
14 for any responsibility, obligation, or duty under this subchap-
15 ter shall be void.

16 “(b)(1) The Executive Director may require employing
17 agencies to contribute an amount not to exceed 1 percent of
18 the amount such agencies are required to contribute in ac-
19 cordance with section 8432(a) of this title to the Thrift Sav-
20 ings Fund.

21 “(2) The sums credited to the Thrift Savings Fund
22 under paragraph (1) of this subsection shall be available and
23 may be used at the discretion of the Executive Director to
24 purchase insurance to cover potential liability of persons who
25 serve in a fiduciary capacity with respect to the Thrift Sav-

1 ings Fund, without regard to whether a policy of insurance
 2 permits recourse by the insurer against the fiduciary in the
 3 case of a breach of a fiduciary obligation.”.

4 (b) The table of chapters at the beginning of part III of
 5 title 5, United States Code, is amended by inserting after the
 6 item relating to chapter 83 the following new item:

“84. Civil Service Supplemental Retirement System..... 8401.”.

7 **TITLE II—AMENDMENTS TO CHAP-**
 8 **TER 83 OF TITLE 5, UNITED**
 9 **STATES CODE**

10 **SEC. 201. TREATMENT UNDER CHAPTER 83 OF CERTAIN INDIV-**

11 **VIDUALS EXCLUDED FROM CHAPTER 84.**

12 (a) DEDUCTIONS, CONTRIBUTIONS, AND DEPOSITS.—

13 (1) Section 8334 of title 5, United States Code, is amended
 14 by adding at the end thereof the following:

15 “(k)(1) Effective with respect to pay periods beginning
 16 after December 31, 1986, in administering this section in the
 17 case of an individual described in paragraph (1) or (2) of sec-
 18 tion 8402(b) of this title—

19 “(A) the amount to be deducted and withheld by
 20 the employing agency shall be determined in accord-
 21 ance with paragraph (2) of this subsection instead of
 22 the first sentence of subsection (a)(1) of this section;
 23 and

24 “(B) the amount of the contribution under the
 25 second sentence of subsection (a)(1) of this section shall

1 be the amount which would have been contributed
2 under such sentence if this subsection had not been en-
3 acted.

4 “(2)(A) With respect to Federal wages of an employee
5 or Member (or that portion thereof) not exceeding the contri-
6 bution and benefit base during the calendar year involved, the
7 appropriate amount to be deducted and withheld under this
8 subsection is the amount by which—

9 “(i) the total deduction for those wages (or for
10 that portion) exceeds;

11 “(ii) the OASDI contribution with respect to
12 those wages (or that portion).

13 “(B) With respect to any portion of Federal wages of an
14 employee or Member which exceed the contribution and ben-
15 efit base during the calendar year involved, the appropriate
16 amount to be deducted and withheld under this subsection is
17 an amount equal to the total deduction for that portion.

18 “(C) For purposes of this paragraph—

19 “(i) the term ‘Federal wages’ means basic pay for
20 service as an employee or Member, as the case may
21 be;

22 “(ii) the term ‘contribution and benefit base’
23 means the contribution and benefit base in effect with
24 respect to the period involved, as determined under
25 section 230 of the Social Security Act;

1 “(iii) the term ‘total deduction’, as used with re-
2 spect to any Federal wages (or portion thereof), means
3 an amount equal to the amount of those wages (or of
4 that portion), multiplied by the percentage which (but
5 for this subsection) would apply under the first sen-
6 tence of subsection (a)(1) with respect to the individual
7 involved; and

8 “(iv) the term ‘OASDI contribution’, with respect
9 to any income, means the amount of tax which may be
10 imposed under section 3101(a) of the Internal Revenue
11 Code of 1954 with respect to such income (determined
12 without regard to any income which is not a part of
13 Federal wages).

14 “(3) The amount of a deposit under subsection (c) of this
15 section for any service—

16 “(A) with respect to which paragraph (1) of this
17 subsection applies shall be equal to an amount deter-
18 mined based on the preceding provisions of this subsec-
19 tion, and shall include interest; and

20 “(B) subject to section 204 of Public Law 98-168
21 shall be equal to the amount required to be deducted
22 and withheld from basic pay for such service under
23 such section, and shall include interest.

24 “(4) This subsection shall not apply with respect to an
25 individual who has made an election under paragraph (1)(B)

1 or (2)(B) of section 208(a) of Public Law 98-168 unless such
2 individual makes an election under section 302 of the Civil
3 Service Supplemental Retirement System Act of 1985.”.

4 (2) Such section 8334 is further amended—

5 (A) in paragraphs (1) and (2) of subsection (e), by
6 striking out “or (j)” and inserting in lieu thereof “(j),
7 or (k)”;

8 (B) in subsection (f), by inserting “or (k)” after
9 “subsection (a)”;

10 (C) in subsection (h), by striking out “and (j)” and
11 inserting in lieu thereof “(j), and (k)”.

12 (b) OFFSET IN BENEFITS.—(1) Subchapter III of chap-
13 ter 83 of title 5, United States Code, is amended by adding at
14 the end thereof the following:

15 “§ 8349. Offset relating to certain benefits under the
16 Social Security Act

17 “(a) Notwithstanding any other provision of this sub-
18 chapter—

19 “(1) the annuity (other than an annuity under
20 paragraph (2) of this subsection) payable for any month
21 to an individual described in 8402(b) of this title shall
22 be equal to the amount by which—

23 “(A) the amount which would otherwise be
24 payable to such individual under this subchapter
25 for such month, exceeds (if at all)

1 “(B) the amount determined under subsection
2 (b) of this section with respect to such individual;
3 and

4 “(2) a disability annuity or survivor annuity pay-
5 able under this subchapter based on the service of an
6 individual described in section 8402(b) of this title shall
7 be reduced by the portion of the amount of any benefits
8 payable under title II of the Social Security Act to the
9 disability annuitant or survivor annuitant to the extent
10 that such benefits are based on the wages and self-em-
11 ployment income of such individual, and are attributa-
12 ble to service (within the meaning of subsection (c) of
13 this section) performed by such individual.

14 “(b) The applicable amount under this subsection for
15 any individual is an amount computed using the method set
16 forth in section 8421(b) of this title, except that the numera-
17 tor of the fraction under paragraph (3) of such section
18 8421(b) shall be based on years of service within the meaning
19 of subsection (c) of this section.

20 “(c) For the purpose of this section, the term ‘service’
21 means service which is employment for purposes of title II of
22 the Social Security Act and chapter 21 of the Internal Reve-
23 nue Code of 1954 by reason of the amendments made by
24 section 101 of the Social Security Amendments of 1983.

1 “(d) This section shall not apply with respect to any
2 annuity, or survivor annuity, which is based on the service of
3 an individual who has made an election under paragraph
4 (1)(B) or (2)(B) of section 208(a) of Public Law 98-168
5 unless such individual makes an election under section 302 of
6 the Civil Service Supplemental Retirement System Act of
7 1985.”.

8 (2) The analysis for chapter 83 of title 5, United States
9 Code, is amended by adding at the end thereof the following
10 new item:

“8349. Offset relating to certain benefits under the Social Security Act.”.

11 (c) .CREDITABILITY OF INTERIM SERVICE.—Section
12 8332 of title 5, United States Code, is amended by adding at
13 the end thereof the following:

14 “(n)(1) Credit shall be allowed for interim covered serv-
15 ice by an individual described in paragraph (1) or (2) of sec-
16 tion 8402(b) of this title without regard to the deposit re-
17 quirements of section 206(b)(3) of Public Law 98-168.

18 “(2) For the purpose of this subsection, ‘interim covered
19 service’ means interim covered service (as defined by section
20 206(a) of Public Law 98-168) with respect to which deduc-
21 tions and withholdings under section 204(a)(1) of Public Law
22 98-168 have been made.”.

1 SEC. 202. NON-APPLICABILITY OF CHAPTER 83 TO INDIVID-
2 UALS UNDER CHAPTER 84.

3 (a) NON-APPLICABILITY.—Section 8347 of title 5,
4 United States Code, is amended by adding at the end thereof
5 the following:

6 “(n) This subchapter shall not apply in the case of—
7 “(1) an employee under section 8401(11) of this
8 title (other than an individual under section 8402(b) (1)
9 or (2) of this title); or

10 “(2) a Member under section 8401(20) of this title
11 (other than an individual under section 8402(b) (1) or
12 (2) of this title) or a Member who makes an election
13 described in section 8401(20) of this title;
14 with respect to any service (as defined by section 8401(26) of
15 this title) of the employee or Member.”.

16 (b) TECHNICAL AND CONFORMING AMENDMENTS.—(1)
17 The section heading for section 8347 of title 5, United States
18 Code, is amended to read as follows:

19 “§ 8347. Administration; regulations; exclusions”.

20 (2) The analysis for chapter 83 of title 5, United States
21 Code, is amended by striking out the item relating to section
22 8347 and inserting in lieu thereof the following:

“8347. Administration; regulations; exclusions.”.

127

1 SEC. 203. PAY FOR THE EXECUTIVE DIRECTOR OF THE FED-
2 ERAL RETIREMENT THRIFT INVESTMENT
3 BOARD.

4 Section 5314 of title 5, United States Code, is amended
5 by adding at the end thereof the following:

"Executive Director, Federal Retirement Thrift Investment Board."

6 SEC. 204. TECHNICAL AMENDMENT TO SECTION 8332(k).

7 The second sentence of section 8332(k)(1) of title 5,
8 United States Code, is amended by striking out "second" and
9 inserting in lieu thereof "third".

10 TITLE III—MISCELLANEOUS
11 PROVISIONS

12 SEC. 301. EXTENSION OF FEDERAL EMPLOYEES' RETIREMENT
13 CONTRIBUTION TEMPORARY ADJUSTMENT ACT
14 OF 1983.

15 The Federal Employees' Retirement Contribution Tem-
16 porary Adjustment Act of 1983 (97 Stat. 1106; 5 U.S.C.
17 8331 note) is amended—

18 (1) in sections 202(1), 202(6), 203(a)(4)(A),
19 203(a)(4)(B), 204(a), 206(b)(2)(A)(i), and 206(c)(3), by
20 striking out "January 1, 1986" each place it appears
21 and inserting in lieu thereof "January 1, 1987"; and

22 (2) in subsections (b) and (c) of section 205, by
23 striking out "and 1986" and inserting in lieu thereof
24 "1986, and 1987".

1 SEC. 302. ELECTION TO MODIFY TERMS OF PARTICIPATION
2 UNDER CHAPTER 83.

3 (a) ELECTION.—Any individual who has made an elec-
4 tion under paragraph (1)(B) or (2)(B) of section 208(a) of
5 Public Law 98-168 may, within 180 days after the date of
6 the enactment of this Act, and if such individual is then par-
7 ticipating in the Civil Service Retirement System pursuant to
8 such election, make an election under this section.

9 (b) EFFECT OF AN ELECTION.—If an individual makes
10 an election under this section—

11 (1) sections 8334(k) and 8349 of title 5, United
12 States Code, shall apply with respect to such individ-
13 ual; and

14 (2) such individual shall be entitled to a payment
15 (out of the Civil Service Retirement and Disability
16 Fund, with respect to the period between the effective
17 date of the election under section 208(a) of Public Law
18 98-168 and the effective date of the election under this
19 section) equal to the difference between—

20 (A) the total amount deducted and withheld
21 from basic pay pursuant to the election under
22 such section 208(a) for such period; and

23 (B) the total amount which would have been
24 deducted and withheld from basic pay for such
25 period under section 204(a)(1) of Public Law 98-
26 168.

1 The amount payable to an individual under paragraph (2)
2 shall include interest, computed in accordance with section
3 8334(e) of title 5, United States Code.

4 (c) ELECTION PROCEDURES; EFFECTIVE DATE OF
5 ELECTION.—An election under this section—

6 (1) shall be by written application to the official
7 by whom the employee or Member is paid; and

8 (2) shall take effect as of January 1, 1987.

9 **TITLE IV—EFFECTIVE DATES**

10 **SEC. 401. EFFECTIVE DATES.**

11 (a) IN GENERAL.—Except as provided in subsection (b),
12 this Act and the amendments made by this Act shall take
13 effect on January 1, 1987.

14 (b) EXCEPTIONS.—(1) Subchapter VII of chapter 84 of
15 title 5, United States Code, as added by section 101 of this
16 Act, shall take effect on the date of the enactment of this
17 Act.

18 (2) Title III of this Act, and the amendments made by
19 such title, shall take effect on the date of the enactment of
20 this Act.

21 (3) The amendment made by section 204 of this Act
22 shall take effect on the date of the enactment of this Act.

○